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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 68 (KBF)

5 ROSS WILLIAM ULBRICHT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 22, 2015
9:10 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 BY: SERRIN A. TURNER

TIMOTHY HOWARD

18 Assistant United States Attorneys

19 JOSHUA LEWIS DRATEL

20 LINDSAY LEWIS

JOSHUA HOROWITZ

Attorneys for Defendant

21 - also present -

22 Special Agent Vincent D'Agostino

23 Molly Rosen, Government Paralegal

Nicholas Evert, Government Paralegal

24 Sharon Kim, Legal Intern

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1 (In open court; jury not present)

2 THE COURT: This is the Continuation of the matter now
3 on trial, the United States of America v. Ross William
4 Ulbricht, 14 Cr. 68.

5 Counsel, state your names for the record.

6 MR. TURNER: Good morning. Timothy Howard and Serin
7 Turner for the government, joined by Nicholas Evert and Molly
8 Rosen and Sharon Kim who is a student intern.

9 THE COURT: Good morning all of you.

10 MR. DRATEL: Good morning. Joshua Dratel with Ross
11 William Ulbricht and Lindsay Lewis and Joshua Horowitz.

12 THE COURT: Good morning to all of you.

13 I have one matter to raise just relating to the letter
14 that I got from the government this morning and to give you
15 folks a sense as to how I think we should proceed on that.

16 We have a juror who had called 45 minutes ago saying
17 that he thought he would be ten to 15 minutes late due to a
18 plumbing issue that he had to address but he only thought it
19 would be ten to 15 minutes, so I think we're look at
20 9:40 anyway, unless he gets here earlier.

21 Do you folks have things that you would like to raise?

22 MR. HOWARD: Just one issue we'd like to address at
23 side bar.

24 THE COURT: Okay. So there's one issue for the
25 government.

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1 For you, Mr. Dratel, anything?

2 MR. DRATEL: No, your Honor.

3 THE COURT: Before we go to side bar, let me just deal
4 with the complaint of bitcoin amount, and this relates to the
5 defense application to read the paragraph 22C, if my memory
6 serves, from the complaint relating to the bitcoin amount. I
7 think we are in agreement at least that the *GAF* case, among
8 others, does provide a basis to read documents of that type.
9 It seems that there's a dispute between the government and the
10 defense as to whether or not there's a material fact which
11 needs to be addressed by virtue of this.

12 My suggestion is sufficient unto the day. Let's see
13 how the government's case comes in and whether or not the
14 defense believes that there's still a basis for asserting a
15 material dispute of fact. I reviewed yesterday the way in
16 which I perceived, based upon the defense opening, that the
17 issue came into the case. Whether or not the factual dispute
18 is resolved by virtue of whatever the proof is, that I think
19 remains to be determined. So let's wait and see whether or
20 not, Mr. Dratel, your application remains and you want to do
21 that at the conclusion of the government's case. It's
22 perfectly appropriate for you to do so if there still is a
23 remaining dispute of fact on that issue.

24 MR. DRATEL: I just want to say, I think this case is
25 completely distinguishable from *GAF*, in fact, the Court says

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1 it's distinguishable from *GAF*. So it's a theory of issue, not
2 a question of a representation made by the government in a
3 binding way, which was a sworn complaint under oath. It's
4 extraordinarily different.

5 THE COURT: Let me just make sure that I have put my
6 view clearly, which is, as a matter of law, the statement in
7 the complaint is the kind of statement, if there's a material
8 dispute of fact, which can be taken as an admission.

9 MR. DRATEL: Right. Thank you.

10 THE COURT: Now, the question is whether or not
11 there's a material dispute of fact, and that is something which
12 the government is taking issue with. My view is sufficient
13 unto the day. If, at the end of the government's case, there's
14 no remaining material dispute of fact on that issue, so be it.
15 You may choose that you don't want to pursue this. If you
16 believe that it remains, we'll talk about it, but I think the
17 legal principle we're now resolved on.

18 Yes, Mr. Turner.

19 MR. TURNER: I just want to note on our part, we
20 actually don't agree that *GAF* applies to an agent affidavit.
21 It's not like a bill of particulars. But in any event, we
22 don't think the Court needs to address that issue because even
23 if it does apply, we don't think there's a genuine conflict in
24 the representations being made.

25 THE COURT: All right. I think the rationale of bill

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1 of particulars versus complaint may give -- is not as much of a
2 distinction as -- the difference between those two types of
3 documents is not so much of a distinction. The rationale of
4 the *GAF* court really was a document put forward by a government
5 agent in furtherance of a governmental position sworn in under
6 oath, which this was. Let's put it aside. I think we
7 understand how we're going to be dealing with it, which is at
8 the end of the government case.

9 That was my issue. Let's hear the issue that you
10 folks wanted to raise at side bar.

11 MR. DRATEL: With respect to side bars, because we
12 have had some long ones, if Mr. Ulbricht can be present at side
13 bar.

14 THE COURT: Well, come on up.

15 (At the side bar)

16 MR. TURNER: This is brief. I want to note the
17 government's continuing concern about the defendant turning to
18 communicate with his family in the presence of the jury during
19 side bars. Members of my team noticed it yesterday. The
20 marshals noticed it. There was an entire news article that
21 talked about all the communications between the defendant and
22 his family in part in the presence of the jury. So I just ask
23 that the defendant be reminded again to save those
24 communications until times when the jury has gone back to the
25 jury room.

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1 THE COURT: Mr. Dratel, will you remind your client of
2 that?

3 MR. DRATEL: Okay. Thank you.

4 THE COURT: It's obviously difficult for -- I didn't
5 see the news article. I don't read the press while the case is
6 ongoing, unless somebody feels like they need to bring
7 something to my attention. I'll have my deputy pay attention
8 to the issue. What I need to understand is what would be the
9 measures that the government would be suggesting should be
10 taken and if there was an issue.

11 One possibility is to move the parents and the family
12 to a different part of the courtroom. There may be other
13 increasingly necessary measures, but let me have Mr. Dratel
14 talk to his client about that.

15 MR. DRATEL: Not saying anything. I'm not
16 acknowledging that there has been an issue.

17 THE COURT: I haven't seen anything myself, but I
18 haven't been looking. And it is an issue because there
19 shouldn't be communicative conduct that can convey things to
20 the jury, but if Mr. Ulbricht is going to come up during side
21 bars, this issue will be eliminated as we proceed because he'll
22 be here and not there.

23 MR. DRATEL: Right. Thank you.

24 THE COURT: Remind him since he's standing here. He
25 can hear.

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1 THE DEFENDANT: I'm aware, and I'm listening.

2 THE COURT: Thank you.

3 (In open court)

4 THE COURT: We're checking on the jury. We might have
5 lucked out, including the person who thought he might be late.

6 If the defendant wants to come up to side bar, which
7 is perfectly fine with the Court, the marshals will come up.
8 That's protocol. I want you to be aware of that because the
9 jury may or may not draw an inference from that. You know, you
10 folks can weigh the competing issues. I don't have a problem
11 with that occurring.

12 We're waiting for Joe to see how the jury is doing.

13 MR. DRATEL: Thank you.

14 THE COURT: Anything else we should deal with right
15 now?

16 MR. HOWARD: Not from the government's perspective.

17 THE COURT: Okay.

18 Mr. Dratel, anything else from your perspective?

19 MR. DRATEL: No.

20 THE COURT: Joe is checking on them. Let's take a
21 brief break. Hopefully, we'll be able to start very shortly as
22 soon as we have a full array of jurors.

23 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Mr. Kiernan, I want to remind you, you are
3 still under oath from yesterday.

4 THE WITNESS: Okay.

5 THE COURT: Mr. Howard.

6 MR. HOWARD: Thank you, your Honor.

7 DIRECT EXAMINATION (Continued)

8 BY MR. HOWARD:

9 Q. Good morning, Mr. Kiernan.

10 A. Good morning.

11 MR. HOWARD: Your Honor, may approach the witness.

12 THE COURT: You may.

13 Q. Mr. Kiernan, I just handed you what's been marked for
14 identification purposes as Government Exhibit 502A. Do you
15 recognize this exhibit?

16 A. I do, yes.

17 Q. What is this?

18 A. These are two thumb drives that were recovered from the
19 defendant's residence.

20 Q. And how do you recognize them?

21 A. From the markings on them and from the paperwork provided
22 with them.

23 MR. HOWARD: The government offers 502A.

24 MR. DRATEL: I don't think -- one second, your Honor,
25 with respect to this specific -- no objection.

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Kiernan - direct

1 THE COURT: All right. Received.

2 (Government's Exhibit 502A received in evidence)

3 Q. Mr. Kiernan, what is a thumb drive?

4 A. It's a media device that you can hold files on. It's a
5 little smaller than a hard drive, but it has the same purposes
6 as a hard drive. You can store files from -- on the devices.

7 Q. And how many thumb drives are contained in Government
8 Exhibit 502A?

9 A. Two.

10 Q. What is the storage capacity of each of those thumb drives?

11 A. One was a four gig thumb drive, and the other one was a 16
12 gig thumb drive.

13 Q. Did there come a time when you reviewed the contents of the
14 16 gigabyte thumb drive?

15 A. Yes.

16 Q. How did you get access to the contents of that thumb drive?

17 A. Through a -- again, with the images that we had created, I
18 had made a staging copying of that -- of the drive, and we were
19 able to look at the drive using the FTK Imager.

20 Q. Again, is a staging copy, what you testified yesterday, a
21 working copy for you not to affect the original?

22 A. Correct, correct. Yes.

23 Q. Did you do anything to confirm whether the staging copy was
24 identical to the evidence on the original thumb drive?

25 A. Yes. We used the MD5 Hash, the digital fingerprint, to

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Kiernan - direct

1 make sure that what I was looking at was the actual true copy
2 of these two drives.

3 Q. Could you please take a moment and flip to what has been
4 marked as Government Exhibit 502 in your binder, please.

5 A. I'm sorry. Which one?

6 Q. 502.

7 A. 200s, right?

8 Q. 502, in the very back.

9 A. 502. Oh, yes, there it is. Okay.

10 Q. Do you recognize what this is?

11 A. I do.

12 Q. And what is it?

13 A. This is a standard report from FTK Imager.

14 Q. What does it depict?

15 A. It depicts the checksum value of the -- of the drives here,
16 the digital fingerprinting.

17 Q. Does it indicate anything about the MD5 Hash value?

18 A. Yes, it does. It has it here.

19 MR. HOWARD: The government offers Government
20 Exhibit 502.

21 MR. DRATEL: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 502 received in evidence)

24 MR. HOWARD: Ms. Rosen, can you please publish
25 Government Exhibit 502.

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Kiernan - direct

1 Q. Mr. Kiernan, see here at the bottom it says MD5 checksum
2 and then a long string of characters starting with "fc12"?

3 A. Correct, yes.

4 Q. What is that long string of characters that we just pointed
5 out?

6 A. That's the number that's produced when you run that
7 program, that MD5 program on the devices.

8 Q. That's what you refer to as essentially the fingerprint?

9 A. That's the fingerprint. That's the number that that
10 represents, yes.

11 Q. Now, could you now flip in your binder to what's been
12 marked for identification purposes as Government Exhibit 205A.

13 A. Okay.

14 Q. Do you recognize what this is?

15 A. Yes.

16 Q. And what is it?

17 A. This is the checksum that I took of the imaged files of the
18 thumb drives to make sure that I'm working on the same -- a
19 good copy of those drives.

20 Q. And you took this screen shot?

21 A. I took this screen shot, yes.

22 MR. HOWARD: The government offers Government
23 Exhibit 502 -- sorry -- 205A.

24 MR. DRATEL: No objection.

25 THE COURT: Received.

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Kiernan - direct

1 (Government's Exhibit 205A received in evidence)

2 MR. HOWARD: Ms. Rosen, can you please publish

3 Government Exhibits 502 and 205A side by side. Actually, let's
4 focus on 205A. Let's do that full screen.

5 Q. Mr. Kiernan, you see here it says computer hash?

6 A. Yes.

7 Q. I'm sorry, up here on the MD5?

8 A. MD5, yes.

9 Q. And then here it says "fc12," a long string of characters.
10 Can you highlight that, Ms. Rosen.

11 What does this represent here?

12 A. Again, that's the value created when looking at the thumb
13 drives that I had, that's the checksum, that's the fingerprint
14 that's created.

15 Q. And did it match with the original copy?

16 A. It did, yes.

17 Q. Did you analyze the contents of this thumb drive?

18 A. I did.

19 Q. And what did you find on the copy of the thumb drive after
20 you started to analyze it?

21 A. I found two files.

22 Q. Could you please flip in your binder to what's been marked
23 for identification purposes as Government Exhibit 297.

24 A. Okay. Got it.

25 Q. How many pages is this exhibit?

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Kiernan - direct

1 A. This is two.

2 Q. And what is it -- do you recognize this exhibit?

3 A. I do.

4 Q. And what is it?

5 A. This is a screen shot of the files stored on the thumb
6 drive, the 16 gig thumb drive; yes.

7 Q. What is the second page?

8 A. The second page is a process used to look at one of those
9 files.

10 Q. Did you take the screen shots of the images depicted in
11 Government Exhibit 297?

12 A. Yes.

13 MR. HOWARD: The government offers Government
14 Exhibit 297.

15 MR. DRATEL: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 297 received in evidence)

18 MR. HOWARD: Could you please publish 297, please.

19 Q. This is another screen shot taken from FTK Imager?

20 A. That it is, yes.

21 Q. What device?

22 A. The 16 gig thumb drives.

23 MR. HOWARD: So, Ms. Rosen, could you please zoom in
24 on the upper right-hand window.

25 Q. And what is listed in this window, Mr. Kiernan?

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Kiernan - direct

1 A. The files that were contained on that thumb drive.

2 Q. A second ago, you mentioned two files in particular. Which
3 ones are those?

4 A. Correct. Those two files are the backup.tar.gz.gpg above
5 that, not the fileslack one.

6 Q. The one I'm pointing to right now?

7 A. Yes, the one in green there. And the other file is
8 www.tar.gz.gpg. Those are the only active real files on that
9 drive. The Xs represent files that were deleted that I did not
10 recover. That's how it comes up.

11 Q. Based on your review of the thumb drive, do you know what
12 date those files were saved?

13 A. Yes. 9/23/2013.

14 Q. And what, if you look at those two files that you just
15 discussed, they end in ".gpg"?

16 A. Correct.

17 Q. What is a gpg file?

18 A. Again, that was encrypted software that had those two files
19 encrypted, encryption software.

20 Q. Were you able to open these files despite the encryption?

21 A. I was, yes.

22 Q. And how were you able to do that?

23 A. Again, by finding a password on the defendant's laptop
24 that -- was I able to open them.

25 MR. HOWARD: Would you please publish the second page

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Kiernan - direct

1 of this exhibit, Ms. Rosen.

2 Q. Mr. Kiernan, what does this screen shot depict?

3 A. Just to verify that the file was actually decrypted after I
4 put the password in. This is just the software tool that I
5 used to do it. That's all.

6 Q. I would like to first focus on the file www.tar.gz.gpg.
7 You were able to successfully decrypt that file, correct.

8 A. Yes.

9 Q. Did you analyze the contents of that file once you
10 decrypted it?

11 A. Yes.

12 Q. What did you discover?

13 A. Those -- the files in that tar file, that file, were
14 similar to the ones I found on the laptop under that web
15 directory if remember from yesterday, that var www directory,
16 so it seemed to be a backup of that.

17 MR. DRATEL: Objection.

18 THE COURT: I'll allow it. Overruled.

19 Q. Mr. Kiernan, you said that these files were saved on
20 September 23, 2013 to the thumb drive, correct?

21 A. Correct.

22 Q. And is that the reason you believe it's a backup of the
23 files on the computer?

24 A. Yes.

25 MR. DRATEL: Objection.

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Kiernan - direct

1 THE COURT: Overruled.

2 Q. And that www/var directory that you testified about
3 yesterday, isn't it correct that you testified that that
4 contained web pages from the Silk Road website?

5 A. Yes. It was a var www, but, yes.

6 Q. And yesterday we walked through a number of exhibits that
7 were from the directory that contained files from the Silk Road
8 website?

9 A. Correct.

10 Q. Did you find each of those exhibits those same files in
11 this backed-up version?

12 A. Yes. Exhibits --

13 MR. DRATEL: Objection.

14 THE COURT: Overruled.

15 Why don't you strike the word "backed-up" and just say
16 "version." Rephrase.

17 Q. Did you find the same files that were introduced as
18 exhibits yesterday in the folder on the laptop containing Silk
19 Road website files as were found in this file that was saved on
20 September 23 to the thumb drive?

21 A. I did; yes.

22 Q. Now, let's focus on the other file we discussed, the
23 backup.tar.gz.gpg file.

24 A. Okay.

25 Q. You were also able to successfully decrypt that, right?

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Kiernan - direct

1 A. Yes.

2 Q. Did you analyze the contents of that file?

3 A. I did, yes.

4 Q. And what did that appear to contain?

5 A. That appeared to contain a different version of the files
6 that I found on the defendant's laptop under the
7 home/frosty/backup directory, that directory.

8 Q. And you testified that those files were saved to a thumb
9 drive on September 23rd, 2013, correct?

10 A. Yes.

11 Q. Now, yesterday we discussed a number of exhibits that were
12 taken -- that you extracted from the back -- from the backup
13 directory on the computer, correct?

14 A. Correct.

15 Q. Did you also find copies of those same files in that file
16 from the thumb drive?

17 A. Yes, in this version, yes.

18 Q. Were there any differences?

19 A. Yes. They were -- seemed to be -- well, it didn't seem to
20 be. They were older versions of what we had found on the
21 laptop.

22 Q. Now, Mr. Kiernan, could you please flip to what's been
23 marked for identification purposes as Government Exhibit 298 in
24 your binder.

25 A. Okay.

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Kiernan - direct

1 Q. Do you recognize what this is?

2 A. Yes.

3 Q. And what is this?

4 A. That was the log.txt file.

5 Q. Where did you recover this log.txt file?

6 A. This was 298 -- it's from the thumb drive of the
7 uncompressed -- the unencrypted file. This file was part of
8 that.

9 Q. Which of the two files that you -- which of the two files
10 is that from?

11 A. From the USB drive.

12 Q. Earlier you testified there were two files you decrypted
13 from the thumb drive, correct?

14 A. Correct.

15 Q. There was the one that contained the Silk Road website
16 files, correct?

17 A. Yes.

18 Q. And there was one that contained the backup files, correct?

19 A. Yes. Right. So this was from the backup -- the backup
20 file, that backup file that we had found on the USB thumb
21 drive, so it's from that uncompressed file, the backup file.

22 Q. Can you please take a look at the last page of this
23 exhibit.

24 A. Yes.

25 Q. What is the last page of this exhibit?

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Kiernan - direct

1 A. This is a screen shot of the contents of the USB
2 drive -- of the -- I'm sorry -- of the uncompressed -- the
3 un -- the decrypted backup file that was found on the USB drive
4 that I decrypted.

5 MR. HOWARD: The government offers Government
6 Exhibit 298.

7 MR. DRATEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 298 received in evidence)

10 MR. HOWARD: Ms. Rosen, can you please publish the
11 last page of Government Exhibit 298, page six, please.

12 Q. Mr. Kiernan, this is another screen shot you took from FTK
13 Imager depicting the file from the thumb drive?

14 A. Yes.

15 Q. And what is depicted in the upper left-hand window of the
16 screen?

17 A. So that's the directory structure starting with the USB of
18 the unencrypted file called backup.tar.gz right there.

19 Q. And there included within a folder called frosty, correct?

20 A. Yes.

21 MR. HOWARD: Could you zoom out, please, Ms. Rosen.

22 Q. Now, where was the log.txt file found specifically on the
23 thumb drive?

24 Ms. Rosen, can you zoom in on the bottom left-hand
25 corner here.

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Kiernan - direct

1 A. On the thumb drive, after it was de-encrypted, the file
2 name is backup.tar.gz, which contained files in it, so it's
3 backup.tar.gz, it's home/frosty/backup is where it is on the
4 uncompressed version of that file.

5 Q. What does the metadata reflect about the date that that
6 file was saved to the thumb drive?

7 A. 9/20/2013.

8 MR. HOWARD: Ms. Rosen, can you please publish page
9 five of this exhibit, and could you please move this to the
10 left side.

11 Q. Earlier you testified -- did you find a similar file on the
12 defendant's laptop?

13 A. Yes.

14 Q. Could you please publish Government Exhibit 241 on the
15 right side of the screen, which has already been admitted into
16 evidence, and please go to page five.

17 Now, Mr. Kiernan, the one on the left side is the one
18 from the thumb drive, right?

19 A. That's correct.

20 Q. And the one on the right is the one from the defendant's
21 laptop, right?

22 A. Yes.

23 MR. HOWARD: Ms. Rosen, can we zoom in on the last
24 couple of entries on each of these pages. Why don't we try top
25 and bottom. It might be more clear.

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Kiernan - direct

1 Q. Now, to be clear, Mr. Kiernan, is the top one from the USB
2 drive?

3 A. Yes.

4 Q. And the bottom one is from the defendant's computer?

5 A. Computer, correct.

6 Q. And what is the last entry on the one taken from the USB
7 drive?

8 A. 9/19/2013.

9 Q. "r&w pinged me and asked for meeting tomorrow," correct?

10 A. That's correct.

11 Q. And you testified that this file was saved on September 20,
12 2013 --

13 A. Yes.

14 Q. -- according to the metadata?

15 A. Right.

16 Q. Could we zoom in on the bottom here starting at 9/19/2013,
17 to the bottom.

18 "9/19/2013 red pinged me asked for meeting tomorrow."

19 That's similar to the last entry of the version you
20 found on the thumb drive, correct?

21 A. That's correct.

22 Q. And there are additional entries for 9/19 to 9/25/2013 as
23 well as 9/30/2013 on the version that was recovered from the
24 defendant's computer, correct?

25 A. That's correct, yes.

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Kiernan - direct

1 Q. So I'm going to read this now: "9/19 to 9/25/2013 red got
2 in a jam and needed 500,000 to get out. Ultimately he
3 convinced me to give it to him but I got his ID first and had
4 Cimon send Harry, his new soldier of fortune to Vancouver to
5 get \$800,000 in cash to cover it. Red has been mainly out of
6 communication, but I haven't lost hope. Atlantis shut down. I
7 was messaged by one of their team who said they shut down
8 because of an FBI doc leaked to them" dealing "vulnerabilities
9 in Tor."

10 THE COURT: I think you misspoke in terms of the word
11 "dealings." It's "detailing."

12 Q. Pardon me. "...detailing vulnerabilities in Tor.
13 9/13/2013 spoke with inigo for a while about the book club and
14 swapping roles with libertas. Had revelation about the need to
15 eat well, get good sleep and meditate so I can stay positive
16 and productive."

17 MR. HOWARD: Ms. Rosen, can you please publish
18 Government Exhibit 214 to the jury, which has already been
19 admitted into evidence.

20 Q. Mr. Kiernan, what does Government Exhibit 214 depict?

21 A. Screen shot of a -- from the defendant's computer of a
22 wallet.dat file.

23 Q. Let's zoom in on the bottom left-hand corner here. And
24 where was this wallet.dat file located?

25 A. This was in the home/frosty.bitcoin directory.

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Kiernan - direct

1 Q. Are you familiar with what a wallet.dat file is?

2 A. Yes. I am.

3 Q. What is it?

4 A. It's the file that contains your bitcoin wallets, your
5 addresses where you store your bitcoins.

6 Q. And what, if anything, did you do with this file after you
7 discovered it on the defendant's laptop?

8 A. Extracted it and gave it to Special Agent Ilhwan Yum.

9 MR. HOWARD: Ms. Rosen, can you please publish
10 Government Exhibit 213 -- pardon me -- the last exhibit that we
11 looked at, the wallet.dat file.

12 THE COURT: Ilhwan Yum?

13 THE WITNESS: Yum, yes.

14 THE COURT: Y-U-M?

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 THE WITNESS: You're welcome.

18 Q. What device was the wallet.dat file on?

19 A. Oh, this was back on the laptop.

20 MR. HOWARD: Ms. Rosen, can you please publish
21 Government Exhibit 213, please.

22 Q. Mr. Kiernan, what does Government Exhibit 213 depict?

23 A. This is a directory structure of the MySQL database under
24 the -- called "market."

25 Q. And on which device was this from?

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Kiernan - direct

1 A. Again, this is back on the laptop.

2 MR. HOWARD: Ms. Rosen, can we just zoom into this
3 area right here.

4 Q. And where was the file located, Mr. Kiernan?

5 A. Yes. All these files are located under
6 var/lib/mysql/market.

7 Q. And what kind of files were contained in that folder?

8 A. Database files.

9 Q. What is a database?

10 A. A database is a collection of records or information that
11 you want to organize and keep in a nice forum. So a digital
12 way to do it is a database. You store it in the database like
13 a phone book, per se, or your contact list on your phones.
14 Those are all databases. It just makes it easier so you can
15 search for people, search for things, phone numbers, where you
16 live -- where someone else lives, and you could do combos. You
17 can query the database to get all the people that you know that
18 live in New York City but also work at a company here; and the
19 object of it is just to make it a lot easier to find data on
20 your hard drives.

21 Q. Did you look at the contents of the database?

22 A. I did.

23 Q. And what did the database appear to contain?

24 A. It contained some entries of drugs and items like that.

25 MR. HOWARD: Ms. Rosen, can you please zoom into the

F1MGULB1

Kiernan - direct

1 upper right-hand corner of this screen, give me part of the
2 page.

3 Q. What is depicted in this window, Mr. Kiernan?

4 A. The layout, the tables contained within the database.

5 Q. I'm going to read a couple of the files here. There's
6 balance log, withdrawals, transaction log, archive, categories,
7 messages, users archive, transaction log -- can we scroll down,
8 Ms. Rosen. We have featured items, shipping, deposits, vendor
9 details.

10 You can take it off the screen, Ms. Rosen.

11 Now, Mr. Kiernan, you testified earlier that the
12 purpose of trying to arrest the defendant at his laptop was to
13 prevent his computer from becoming encrypted, correct?

14 A. That's correct; yes.

15 Q. And you also testified that not every laptop is encrypted,
16 correct?

17 A. No, not every laptop.

18 Q. And what does a user have to do to encrypt the data on his
19 laptop?

20 A. Usually enable some type of software that enables
21 encryption.

22 Q. And if a user has encryption available on the laptop, how
23 can the encryption be activated?

24 A. Like we had talked about, same thing: You can close your
25 laptop, you can log out of your laptop, power failure would

F1MGULB1

Kiernan - direct

1 cause a laptop to go back into an encryption state, things to
2 that nature.

3 Q. And what, if anything, did you do during the triage process
4 to prevent these things from happening?

5 A. During the triage state, we continued to make sure the
6 computer was active, looked for any type of screen-savers or
7 programs running that would try to disable the laptop or turn
8 the laptop off and put it into a sleep state that would enable
9 encryption once again. That was mostly what the triage was
10 for.

11 Q. When you were performing your triage, were you able to
12 determine whether there was any encryption running on the
13 computer?

14 A. Yes. Yes. So using a -- I opened up a terminal window
15 to -- it's just a program to get a little bit behind the scenes
16 of what you -- the nice, gooey, pretty picture interface that
17 you're used to seeing on the screen, just to run some commands
18 to see if -- what was running on it. So I did a listing of
19 what types of programs were running in the background to look
20 for an encryption-type software, and I was able to find a file
21 that showed that encryption was enabled on the machine.

22 Q. What would have happened if the defendant had closed his
23 laptop before the FBI seized it?

24 A. It would have went into an encrypted state.

25 Q. And what would have happened if you had not been able to

F1MGULB1

Kiernan - direct

1 keep the laptop alive while you were performing your triage?

2 A. It would have turned into a brick basically. It would have
3 been tough to -- it makes it a lot harder to get into -- into
4 the machine to actually get any data off of the device.

5 MR. HOWARD: The government has no further questions.

6 THE COURT: Thank you.

7 Mr. Dratel.

8 MR. DRATEL: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. DRATEL:

11 Q. Good morning, Mr. Kiernan.

12 A. Good morning.

13 Q. I want to go back to actually where you ended with the day
14 of the arrest, the day that Mr. Ulbricht was arrested. By the
15 way, the encryption, when you talked about closing the laptop
16 where it basically made it inaccessible, right?

17 A. Yes.

18 Q. So him being in a public place was an important factor,
19 right?

20 A. Yes.

21 Q. Because if you had to go through the door of his apartment,
22 he would have had an opportunity to close his laptop, right?

23 A. That's right.

24 Q. I want to go back to Government's Exhibit 128H, please.
25 And that's a paragraph of the Glen Park library, correct?

F1MGULB1

Kiernan - cross

1 A. That's correct, yes.

2 Q. And that's where Mr. Ulbricht was arrested, right?

3 A. Yes.

4 Q. He was arrested -- if we can enlarge the right part, I
5 guess, yes. That's fine. He was arrested at the table where
6 the person is sitting against the window, is that right?

7 A. Yes.

8 Q. And in fact, Mr. Ulbricht was sitting not where that person
9 is, but he was actually sitting with his back to where we are
10 and he was looking out the window, right?

11 A. He was -- what I remember, he was just like that.

12 Q. You've been interviewed in preparation for your testimony,
13 correct?

14 A. Yes.

15 Q. You sat down with the government, right?

16 A. Yes.

17 Q. More than once, right?

18 A. Several times.

19 Q. Yes. And didn't you tell the government that Mr. Ulbricht
20 had his wack to you looking out a window? Didn't you say that
21 twice to the government?

22 A. I don't -- do you have anything to show me?

23 Q. Sure. I'll show you what's marked as 3508-2 and 3508-7.

24 If you could look at 3508-2 and 3508-7 and the first
25 highlighted portion on that page and the highlighted portion on

F1MGULB1

Kiernan - cross

1 that page.

2 A. Sure.

3 Q. Does that refresh your recollection, that you told the
4 government twice in preparation for this case that
5 Mr. Ulbricht's back was to you and he was looking out the
6 window?

7 A. I don't know what these are, but that's what it says there,
8 yes.

9 Q. And could we go to Government's Exhibit 225B, please. If
10 we can scroll down a little bit. This is a conversation that
11 you -- you didn't read it. Mr. Howard read it yesterday,
12 right? This is something you got off the laptop, right --

13 A. Correct, yes.

14 Q. -- you got off the drive that was given to you? The
15 highlight version reads -- and this is -- just to put this back
16 in context, this is Dread Pirate Roberts and this is on a Tor
17 chat, right?

18 A. These are from the Tor chats, yes.

19 Q. And Dread Pirate Roberts is responding to someone working
20 for him that the person is concerned about being arrested,
21 right, about law enforcement?

22 And Dread Pirate Roberts responds "There is nothing on
23 your laptop for them to use, if you obscure your bitcoins
24 properly, there's there is no way for them to trace them back
25 to me. Realistically, the only way for them to prove anything

F1MGULB1

Kiernan - cross

1 would be for them to watch you log in and do your work," right?

2 That's Dread Pirate Roberts, right?

3 A. That's what it says.

4 Q. And that's January of 2013, right?

5 A. Yes.

6 Q. So if we could go further. Again Dread Pirate Roberts:

7 "Sure, someone could stand behind you without you realizing
8 it," right? Yes?

9 A. Yes.

10 Q. So Dread Pirate Roberts understood full well the dangers of
11 having his back to anyone who could sneak up behind him, right?

12 MR. HOWARD: Objection; speculation.

13 THE COURT: Sustained.

14 Q. You testified yesterday, right, that the argument dispute
15 that was contrived to distract Mr. Ulbricht was, in fact,
16 behind him, right, and he turned around?

17 A. Yes.

18 Q. So if we go back to 228 -- I'm sorry -- 128H, Mr. Ulbricht
19 really couldn't be sitting in that spot where that person was
20 against the window because the other two people would have to
21 be behind him, right?

22 A. That's where I remember him.

23 Q. But you told the government twice in preparation for this
24 case that he had his back to you looking out the window?

25 A. It's here. It's in this document here.

F1MGULB1

Kiernan - cross

1 Q. You deny that you said that?

2 A. Yeah, I mean. I don't deny I said it, but it's here in the
3 document. If that's what that is, then, yes, I said that.

4 (Continued on next page)

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Flmdulb2

Kiernan - cross

1 Q. OK. Now, just going back to 228 -- I'm sorry, 225B, which
2 we were just looking at.

3 So if we go back up a little further to the first
4 part, so it says: "There is nothing on your laptop for them to
5 use. If you obscure your bitcoins properly there is no way for
6 them to trace them back to me."

7 But all of the material that you put in yesterday, and
8 some of what you put in today, came from an image that
9 Mr. Beeson provided to you from Mr. Ulbricht's laptop?

10 A. That is correct.

11 Q. The journals, right?

12 A. Yes.

13 Q. The Tor chat logs; thousands of pages of Tor chat logs,
14 right?

15 A. Yes.

16 Q. PGP keys, right?

17 A. Yes.

18 Q. Now, you have a background in security, correct, in
19 Internet security, right?

20 A. Yes.

21 Q. You have taken courses; you have trained that way, right?

22 A. Yes.

23 Q. And aren't you -- isn't it part of the security for a PGP
24 key is not to make it available on your computer, your private
25 key?

Flmdulb2

Kiernan - cross

1 MR. HOWARD: Objection to form.

2 THE COURT: Sustained. You can rephrase.

3 BY MR. DRATEL:

4 Q. Isn't it a fundamental part of security not to keep your
5 PG -- your private PGP key available on your computer in a
6 manner that can be viewed by anyone on that computer?

7 A. No. You have to -- the key has to be somewhere. If you
8 set it up on your computer, that's where you would keep your
9 key. The idea behind it is to store it in a safe location,
10 like an encrypted, again.

11 Q. And you put it in a file that says "Key," is that a good
12 way to disguise it?

13 MR. HOWARD: Objection.

14 THE COURT: Sustained.

15 Q. But you wouldn't put it in a file -- would you as a person
16 trying to be secure put it in a file with the name "Key" on it?

17 MR. HOWARD: Objection.

18 THE COURT: Sustained.

19 Q. Do you instruct people on how to disguise PGP keys on their
20 computer?

21 A. I don't --

22 Q. Have you been instructed? Is there training on that?

23 A. Is there training on that? No, there is no training on
24 where to keep your PGP key. It is your secret key. So if I
25 was doing it, I would have an encrypted laptop and keep my key

Flmdulb2

Kiernan - cross

1 there, and when I turned off my laptop the key would be safe.

2 Q. And you would put it in a file called "key"?

3 MR. HOWARD: Objection.

4 THE COURT: Sustained.

5 Q. And when you say -- throughout your testimony, you said
6 "pulled off the defendant's laptop," "pulled off the
7 defendant's laptop." In fact, what you're working with is not
8 the defendant's laptop, correct?

9 A. Not the -- it's a copy of what was on the defendant's
10 laptop.

11 Q. Right. It was a copy that you didn't make?

12 A. A copy I didn't make, no.

13 Q. Right.

14 A. That is correct.

15 Q. It is what you received from Mr. Beeson?

16 A. Yes.

17 Q. So when you say "off the laptop," "off the laptop," it is
18 really off of a copy of a copy, right? In other words,
19 Mr. Beeson gave you a hard drive that was not the hard drive
20 from the laptop but an image of the laptop?

21 A. That is correct.

22 Q. And then you made a copy of that and worked off of that?

23 A. Yes.

24 Q. So -- and you didn't participate in the imaging that
25 Mr. Beeson did, correct?

Flmdulb2

Kiernan - cross

1 A. That's correct.

2 Q. Also, when you said -- sometimes you said it's up to the
3 designers of the site, right, in terms of certain issues with
4 respect to Web pages and things like that?

5 MR. HOWARD: Objection to form.

6 THE COURT: Overruled.

7 A. I did, yes.

8 Q. And when you -- and when you say "designers," that doesn't
9 mean that it can't be modified at some point, right, by other
10 people?

11 A. The names of it?

12 Q. The way the site appears, the names of fields and the way
13 of the Web pages.

14 A. Sure, it could be changed, again, by the designer or --

15 Q. When you say "designer," it doesn't have to be the same
16 designer as the initial designer, it could be other people
17 later on, right?

18 A. Yes.

19 MR. DRATEL: Now, if we could go to Government's
20 Exhibit 201A, please.

21 Go further up. Go to the metadata.

22 (Pause)

23 Q. So this is the one where your phone -- you are taking this
24 with your BlackBerry, correct?

25 A. That is correct, yes.

Flmdulb2

Kiernan - cross

1 Q. And your BlackBerry registers East Coast time, right?

2 A. It does, yes.

3 Q. Even though you're standing in the Glen Park library in
4 California, your electronic device in your hand has East Coast
5 time, right?

6 A. It does, yes.

7 Q. So it doesn't reflect where you are?

8 A. Time zone, no.

9 Q. Right?

10 A. Time zone, no. Physically I'm still in San Francisco.

11 Q. Right. So the time zone reflected in your electronic
12 device in the metadata is not accurate as to where you actually
13 are?

14 A. That's correct.

15 Q. So metadata is just digital data, right?

16 A. It is.

17 Q. Now, we talked just for a second -- you have training in
18 network security, correct?

19 A. I do.

20 Q. And you were an informational technology -- information
21 technology specialist, is that one of the positions you have
22 held?

23 A. Yes.

24 Q. So could you explain what that involves in terms of
25 training?

Flmdulb2

Kiernan - cross

1 A. Information technology specialist?

2 Q. Yes.

3 A. Yes. That is more on the side of maintenance and things to
4 that nature of computer systems.

5 Q. Keeping networks secure?

6 A. Keeping networks secure.

7 Q. Teaching best practices to people who work on networks?

8 A. Just, again, managing computer systems for users and things
9 like that.

10 Q. Now, by the way, the photos that we've seen that you've put
11 in evidence were not the only photos that you took of the
12 laptop, correct?

13 A. No. No.

14 Q. I want to show you what's marked as Defendant's G, for
15 identification.

16 I will give you the original.

17 A. OK.

18 Q. And I ask you if you recognize that?

19 A. I do.

20 Q. Is that a photo that you took?

21 A. It is, yes.

22 Q. Is it a photo of the defendant's laptop that you took
23 October 1, 2013, at the time -- at or near the time of his
24 arrest, or shortly after his arrest?

25 A. Yes, it is.

Flmdulb2

Kiernan - cross

1 MR. DRATEL: I move it into evidence, your Honor.

2 THE COURT: Mr. Howard.

3 MR. HOWARD: No objection.

4 THE COURT: Received, defendant's Exhibit G.

5 (Defendant's Exhibit G received in evidence)

6 MR. DRATEL: Thank you, your Honor.

7 So if we could publish it, please.

8 Q. Now, this window shows one of the programs that was
9 operating at the time of Mr. Ulbricht's arrest, correct?

10 A. It does, yes.

11 Q. And it is a program called BitTorrent?

12 A. It's called TransMissions but it is a BitTorrent client,
13 yes.

14 Q. Right, it is a BitTorrent client. Could you explain what
15 that means?

16 A. It is a file sharing program that allows you to -- it
17 allows you to upload and download files that you want to look
18 at. It's based on seeds that are up on the network that you
19 pull. You pull down the seed and you can populate your data
20 with -- populate your folders with the data.

21 Q. And it is very popular for music and movies and things like
22 that, correct?

23 A. It is, yes.

24 Q. It is called a peer-to-peer network, is that one of the
25 ways this is described?

Flmdulb2

Kiernan - cross

1 A. It runs on something like that, yes.

2 Q. And it involves your computer connected to the Internet,
3 right?

4 A. Yes.

5 Q. I'm trying to break this down rather than have a compound
6 question.

7 A. That's fine.

8 Q. Your computer connected to the Internet with all other
9 people who are on that same network, that BitTorrent network,
10 who are connected to the Internet, right?

11 A. Yes.

12 Q. In other words -- and they can -- if they identify files on
13 your computer that they want to share, they can take them from
14 your computer, right?

15 A. Not that easy but you have to give the Torrent to them to
16 actually get files from your computer that you designate. It
17 is not willy-nilly where you can go anywhere on your computer,
18 but you designate spots that you can download from -- not put
19 on but download from.

20 Q. But, in other words, you share the files, essentially?

21 A. Essentially you are sharing some of your files.

22 Q. And so this says, it says: "Sending to 7 of 9 connected
23 peers," right?

24 A. Yes.

25 Q. So that means that there are seven computers out there in

Flmdulb2

Kiernan - cross

1 the world that are actually connected to Mr. Ulbricht's
2 computer right there?

3 A. To --

4 Q. Through this network?

5 A. To his specified location that he gave.

6 Q. Right. But to his computer?

7 A. Yeah, to his computer.

8 Q. Do you see what's downloading there is the Colbert Report,
9 right?

10 A. Yes.

11 Q. It is not complete at that point, right?

12 A. It doesn't look to be.

13 Q. It only looks like about 8-and-a-quarter megabytes of 197
14 megabytes, right?

15 A. Yes.

16 Q. So that takes some time, correct?

17 A. Yeah. Depending on connection speeds and things like that,
18 but yeah.

19 Q. So you have to have an open port to the Internet on your
20 computer to operate BitTorrent, correct?

21 A. You do. The protocol is required that a port or a
22 connection spot is open.

23 Q. And the fact that he's downloading at that time, that that
24 process is going on, means that the port was open at that time,
25 right?

Flmdulb2

Kiernan - cross

1 A. It was connected.

2 Q. And that you know from your training makes one vulnerable,
3 correct, to have an open port like that -- it makes your
4 computer vulnerable?

5 A. That's how the Internet works. There is open ports on a
6 lot of different surfaces. It is the nature of the Internet.
7 Something has to get transferred back and forth. So, yes, a
8 port was open on the machine to allow BitTorrent, that client,
9 to work.

10 Q. But that also means that those with sophisticated computer
11 skills could exploit an open port as well, correct?

12 A. Is it possible for that to happen? Yes.

13 Q. In fact, you could be exploited by hackers, by viruses,
14 right; all sorts of things can get into your computer through
15 BitTorrent? Even BitTorrent downloading, you can have viruses
16 and malware that come with those files, right?

17 A. With the files you download?

18 Q. Yes.

19 A. Yes, they can contain programs that do things like that.

20 Q. I'm sorry. Programs?

21 A. There are programs that can be used maliciously, yes.

22 Q. Maliciously, including to operate a computer remotely,
23 right, that kind of malware can be --

24 A. They make that stuff but it's again ...

25 Q. And knowing a port is open on a computer, for someone

Flmdulb2

Kiernan - cross

1 trying to exploit that computer makes it easier to get in,
2 right, if you know that there is a port there that's available?

3 A. That's incorrect. It is not easier. It gives you
4 opportunities but it does not make it easier. It is the
5 software guarding that port that is --

6 Q. But, I mean, it is easier than no port at all open,
7 correct?

8 A. Yes. Again, that's how the Internet works. You have these
9 ports that are open.

10 Q. And does the FBI allow you to run BitTorrent on your
11 machine at work?

12 THE COURT: Let's have a sidebar.

13 (Continued on next page)

Flmdulb2

Kiernan - cross

1 (At the sidebar)

2 THE COURT: I'm concerned that you're trying to make
3 this witness into a general expert on BitTorrent. I have no
4 problem -- obviously you are fully entitled to explore what
5 acts this witness took with respect to the testimony he has
6 given and explore his background in terms of whether he was
7 qualified to do that. But you can't make him into a
8 generalized expert on BitTorrent. This has gone far afield.

9 MR. DRATEL: That is my last question on this subject.

10 THE COURT: We are not going to this question. It is
11 irrelevant with this witness. It's beyond the scope of his
12 direct. All right? I mean --

13 MR. DRATEL: I don't think it is beyond the scope of
14 his direct.

15 THE COURT: Absolutely. Are you aware that the FBI
16 allows BitTorrent?

17 MR. DRATEL: It is for purposes of the security, in
18 other words, the lack of security of BitTorrent.

19 THE COURT: That is not relevant. Whether the FBI
20 allows BitTorrent on their computers is not relevant to whether
21 or not the particular computer here -- you've got to establish
22 that it was running BitTorrent. If you want to explore whether
23 or not, if you've got a good faith basis to believe -- a good
24 faith basis to believe that the files were placed on this
25 computer, Mr. Ulbricht's computer, through the use of the

Flmdulb2

Kiernan - cross

1 BitTorrent program, then go after that. But I am not going to
2 let you go into the practices of the FBI.

3 MR. DRATEL: It is the practice -- it is a fundamental
4 question of security. This is a completely insecure system for
5 someone who --

6 THE COURT: That is not this case. Thank you.

7 Let's go back.

8 (Continued on next page)

Flmdulb2

Kiernan - cross

1 (In open court)

2 BY MR. DRATEL:

3 Q. You have been trained and certified in the Linux operating
4 system, correct?

5 A. Correct.

6 Q. A number of courses and certifications --

7 A. Yes.

8 Q. -- that you have taken with respect to Linux in particular?

9 A. Oh, yes.

10 Q. And you talked about the Tor chats that you created as a
11 test, as an experiment, right?

12 A. Yes.

13 Q. And you saved them, right?

14 A. Yes.

15 Q. So could you describe the process by which you saved them?

16 A. Sure. Turn on the -- inside Tor chat in Tor chat client
17 there is an enabling button that allows you to log your chats
18 and save my chats.

19 Q. So, in other words, you had to affirmatively hit the enable
20 button to save them?

21 A. Yes.

22 Q. So that was a decision -- conscious decision to save them
23 on your part?

24 A. Yes.

25 Q. And Tor chats can easily be deleted from a computer, right?

Flmdulb2

Kiernan - cross

1 A. Sure.

2 Q. You wouldn't even have to save them at all. Unless you hit
3 the button, they wouldn't be saved?

4 A. Yes.

5 Q. And there are programs that can wipe away even any trace of
6 what's happened on a computer previously, right?

7 A. Yes.

8 Q. And with respect to the chats that we saw, some of the
9 ones -- and, again, Mr. Howard read them, you didn't read them,
10 but some of them were snippets from chats, obviously, from a
11 long series of chats, right?

12 A. That's right.

13 Q. And the snippets sometimes were different days and they
14 were separated by a black line, right, some of them?

15 A. Yes.

16 Q. So those weren't all continuous; some of them were
17 separated by time?

18 A. Yes.

19 Q. Now, that line that's on the top of each chat as it appears
20 initially -- not in the way that it was done for purposes of
21 reading them into evidence, but initially the line that says
22 the log file is not signed and has no cogency of proof; do you
23 recall that?

24 A. I do, yes.

25 Q. And that's automatically generated at the beginning of each

Flmdulb2

Kiernan - cross

1 chat, right?

2 A. Yes.

3 Q. And that means that there is no way to validate that these
4 particular log files were generated on that computer, correct?

5 MR. HOWARD: Objection.

6 THE COURT: I will allow it.

7 A. I'm sorry. Can you repeat that?

8 Q. Sure. What that means is that there is no way to validate
9 that those log files were in fact generated on that computer?

10 A. Not generated but that's where they were saved.

11 Q. Right. OK. So it doesn't -- OK, not generated.

12 And those log files don't take up a lot of space,
13 correct, about 15 kilobytes?

14 A. No, they're small. They are text files. They are not big.
15 I don't know the size of them.

16 Q. And a kilobyte is about a thousandth of a megabyte, right,
17 roughly?

18 A. Somewhere about there.

19 Q. 1024 bites to a megabyte?

20 THE COURT: Hold on. I think that because your
21 question and his answer were interspersed, I'm not actually
22 sure if it is 1024, which you want it to be, or a thousand, or
23 if you care.

24 MR. DRATEL: I don't necessarily care. I was just
25 trying to be precise.

Flmdulb2

Kiernan - cross

1 A. 1024 is what it is, but we will go with a thousand.

2 Q. So those are files, because of the size of the files, the
3 physical text files, they could be quickly transferred,
4 correct?

5 A. Yes.

6 Q. Even over the Internet, correct?

7 A. Yes.

8 Q. And that is basically true for all the text files we saw,
9 right, that they are small?

10 A. They are small --

11 Q. Ones -- even some of those spreadsheets are relatively
12 compact, right, in terms of size?

13 A. Yes. It is not a huge file.

14 Q. And you talked about the mastermind screen.

15 A. Yes.

16 Q. And the mastermind.php file?

17 A. Yes.

18 Q. And the mastermind screen is the one that you found by
19 hitting the back button, right, from the screen that was on the
20 laptop when you first received it?

21 A. That's right.

22 Q. And did you have an opportunity to examine any of the other
23 php files that were in that var/www directory?

24 A. Where? On the laptop?

25 Q. What you had, the copy that you had.

Flmdulb2

Kiernan - cross

1 A. Yes.

2 Q. And do you know whether a user logging into the Silk Road
3 site, using the password and username for the Dread Pirate
4 Roberts' account, would automatically be directed to that
5 mastermind page? Would that be -- do you know whether that
6 would be the first thing that would come up?

7 MR. HOWARD: Objection. Beyond the scope.

8 THE COURT: Hold on. Let me just read his question.

9 (Pause)

10 THE COURT: I will allow it.

11 A. Can you repeat that?

12 Q. Sure. Do you know whether a user logging on to the Silk
13 Road site, using the Dread Pirate Roberts' username and
14 password to get on to the Silk Road site, would automatically
15 be directed to the mastermind page?

16 A. I don't know.

17 Q. I am going to show you what's marked as Defendant's J and
18 ask you to look at just first what it is. Do you recognize
19 that?

20 A. Yes. The code looks familiar.

21 Q. Is that from the php files?

22 A. Yes.

23 Q. From the image that you were given of the laptop, right?

24 A. I don't know if from the laptop or the server.

25 MR. HOWARD: Objection to foundation.

Flmdulb2

Kiernan - cross

1 THE COURT: Well, why don't you try to build a more
2 concrete foundation.

3 MR. DRATEL: Sure.

4 Q. You've reviewed this document in the course of your
5 investigation, correct?

6 A. Yes.

7 Q. That looks familiar to you?

8 A. This looks familiar, yes.

9 Q. And you don't know whether it is from the server or from
10 the laptop, or could it be from both?

11 A. It could be from both.

12 Q. And it would be either from the Silk Road server or from
13 the laptop image that you -- of Mr. Ulbricht's laptop that you
14 reviewed, right?

15 A. Yes.

16 MR. HOWARD: Objection. Beyond the scope.

17 THE COURT: Well, I don't know whether it is or not.
18 I have to see where this is going. I will allow a few more
19 questions.

20 MR. DRATEL: OK. Thank you, your Honor.

21 I would move it in evidence, your Honor.

22 MR. HOWARD: Objection.

23 THE COURT: Well, I think that I'm going to receive it
24 subject to connection. Obviously, whether it is in the server
25 or the laptop, if that becomes important, then you will need to

Flmdulb2

Kiernan - cross

1 determine which it came from. If that is an irrelevancy, then
2 since it came from one or the other, there would be a
3 sufficient foundation. So I would receive it.

4 So it will be received subject to any later testimony
5 which may require a different ruling.

6 You may proceed.

7 MR. DRATEL: Thank you, your Honor.

8 THE COURT: Defense Exhibit J received.

9 (Defendant's Exhibit J received in evidence)

10 BY MR. DRATEL:

11 Q. So if you look at the lines that are marked on page 2, do
12 you see that?

13 A. Yes.

14 Q. So from looking at those, is it possible now to answer the
15 question as to whether a person logging on to the Silk Road
16 site with the username and password of Dread Pirate Roberts
17 would automatically be directed to the mastermind page?

18 A. I don't know.

19 Q. And, by the way, php -- I'm sorry, go ahead.

20 A. Like you said, I could read the php script and I could
21 tell. I don't know.

22 Q. I'm sorry. You said you could read the php script?

23 A. I don't know the context of the script, that is all.

24 Q. Php is a script, essentially. We talked yesterday about
25 operating systems, right, and so an operating system would be

Flmdulb2

Kiernan - cross

1 Ubuntu as part of a Linux-based operating system, right, kind
2 of like Windows --

3 A. Yes.

4 Q. -- or Mac; Yosemite I think is the current version. But
5 php is what's called a scripting program, right?

6 A. It is, yes.

7 Q. And by that we mean sort of how you build a site,
8 essentially, a website?

9 A. Yes.

10 Q. And is it somewhat similar to, in a Windows-based
11 environment, say html?

12 A. Html, similar but not the same.

13 Q. Not exactly, but it is the same -- in other words, it is
14 the way that website appears, its fields, that's the php part,
15 right?

16 A. Yes.

17 THE COURT: All right. Let's take our mid-morning
18 break now, ladies and gentlemen. And I want to remind you not
19 to talk to anybody else about -- anybody about this case,
20 including each other or anybody else. And we'll come back in
21 just a few minutes. Thank you.

22 THE CLERK: All rise as the jury leaves.

23 THE COURT: And, Mr. Kiernan, you can step down and
24 take a break.

25 THE WITNESS: Thank you.

Flmdulb2

Kiernan - cross

(Continued on next page)

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Flmdulb2

Kiernan - cross

1 (Jury and witness not present)

2 THE COURT: All right. Ladies and gentlemen, let's
3 all be seated.

4 I want to find out where you're going, Mr. Dratel,
5 because what you can't do with this witness is -- I've allowed,
6 in response to the government's objection about going beyond
7 the scope, I have allowed you some room, but what you can't do
8 is make him into a generalized computer expert for the defense.
9 You are welcome, of course, if you have complied with the
10 appropriate disclosure requirements, to call your own expert or
11 to call a percipient witness. But the mastermind page came in
12 through the back button series. It was a percipient witness
13 set of testimony, as opposed to generalized how you would enter
14 the username. The username was there, but the coding behind it
15 was not the subject of this witness' testimony.

16 MR. DRATEL: He testified about php. He testified
17 about the website pages.

18 This is from the laptop. We are going to establish
19 that with him. And it is from the laptop, and he said he
20 looked at php files. He should just --

21 THE COURT: You have to stay within the scope of the
22 direct. So the direct is not just because he mentioned php,
23 every php question you can think of that might be helpful to
24 the defense, it is to go after what this witness testified
25 about. The scope of his direct, as you know, determines the

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Kiernan - cross

1 parameters of the cross. And so you are welcome to go anywhere
2 with the cross. But his direct was actually quite narrow. It
3 was here's what I got. Here are the files I extracted.

4 MR. DRATEL: He put in the entire laptop. That is
5 fair game now.

6 THE COURT: It is not fair game now.

7 MR. DRATEL: He can't just ignore it by not asking the
8 witness. He examined the entire laptop.

9 THE COURT: You can get him, through
10 cross-examination, on any one of the files he testified about.
11 Go after that. But you've got to tie it specifically to the
12 file in the extraction process. The two things he did was
13 extraction, and then this file came out of this directory,
14 which had this folder in it. That's it.

15 MR. DRATEL: No, but there is more. He puts in a
16 whole document, essentially. If someone puts in a 30-page
17 document and he only testifies about page 2, that doesn't put
18 the other 29 off limits, I mean, on cross if they are part of
19 the same document.

20 THE COURT: Sometimes it does. It depends. And so
21 just because he's got a laptop that he's authenticated doesn't
22 mean he can be your laptop expert.

23 Now, to be clear -- to be clear, if you want to call
24 somebody to talk about php, the laptop more generally,
25 BitTorrent more generally, that's the defense case, but this

Flmdulb2

Kiernan - cross

1 witness is not your generalized computer witness.

2 MR. DRATEL: He is not an expert. I'm not making him
3 an expert. He testified, number one, about the mastermind page
4 yesterday. And he testified about the mastermind file on the
5 laptop in the php directories. That makes him fair game for --

6 THE COURT: That does not make him --

7 MR. DRATEL: I can't be limited to just -- then I have
8 no cross if all I can do is just talk about what they've talked
9 about. Cross is much further than that.

10 THE COURT: No. What you can do is talk about whether
11 or not in fact the file that he looked at on the computer was
12 not a php file, it was really something else, whether or not
13 his definition of php was inaccurate. You go dig into anything
14 that he testified about. Whether when he pushed the back
15 button it somehow corrupted the file, changed the file, whether
16 or not he's reading the directory and the file paths correctly.

17 Let me hear from the government, but I am concerned
18 that this is going to go on far longer than it needs to go
19 because you are trying to make him into a different witness.

20 MR. DRATEL: He answered the question, no, he can. I
21 just want to now establish that it's in the laptop --

22 THE COURT: I know, but we are going to be coming back
23 to the same problem again and again.

24 MR. DRATEL: I don't think so.

25 THE COURT: Let me hear from the government about your

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Kiernan - cross

1 view.

2 MR. HOWARD: Your Honor, I think the Court has it
3 absolutely right. That is why we are objecting as to the scope
4 of the cross-examination.

5 Mr. Kiernan simply testified to the extraction of
6 files from certain locations on the laptop. He did not testify
7 about how the scripts worked, how they operated, or anything of
8 that sort. And it is apparent that Mr. Dratel is trying to go
9 further than the scope of Mr. Kiernan's direct, which was just
10 simply about locating and extracting files from the digital
11 evidence.

12 MR. DRATEL: He didn't. He went further. He talked
13 yesterday about the purpose of php and --

14 THE COURT: You can go after -- if his definition of
15 php was wrong and you want to undermine his credibility in
16 terms of his expertise by asking him whether the definition is
17 correct, that is fair game. Absolutely. No doubt about it.
18 That is absolutely impeachment material.

19 If, however, by merely mentioning the word "php" you
20 are now going to find other kinds of php material which would
21 be helpful to the defense, he's not your witness. You need a
22 different witness, either that the government may later call
23 where you can use it or where you yourself call. But we are
24 going to stay within the scope of the direct or this is going
25 to become a detour and frolic. You need to call a witness to

Flmdulb2

Kiernan - cross

1 make the points you want to make if it is beyond the scope. I
2 am not going to allow it to be very far afield.

3 You know what's within the scope of the direct.

4 MR. DRATEL: I disagree, your Honor. OK. So --

5 THE COURT: Well, stay within the scope of the direct.
6 And if you are able to stay within the scope of the direct,
7 then it will be clear to us both that you understand what I'm
8 saying. If you continue to go outside the scope of the direct,
9 I will sustain the government's objections.

10 The government should continue to object if it
11 believes it is outside the scope of the direct. I wanted to
12 see where this was going. It's going outside the scope. I
13 want to say, for the fifth time I think now, I am by no means
14 suggesting that the defense can't put on evidence it believes
15 is appropriate as to these very topics, as to these very
16 documents, as to these very files, but it's for the defense to
17 do if it's not for the purposes of directly going into the
18 scope of the direct of this witness.

19 Let's take our own break and then we'll come back.

20 THE CLERK: All rise.

21 (Recess)

22 THE COURT: All right. Let's bring out the jury.

23 (Continued on next page)
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Flmdulb2

Kiernan - cross

1 THE CLERK: All rise as the jury enters.

2 (Jury present)

3 THE COURT: All right, ladies and gentlemen. When you
4 get to your seats, please be seated.

5 Mr. Dratel, you may continue.

6 MR. DRATEL: Thank you, your Honor.

7 BY MR. DRATEL:

8 Q. So let's go back to your creating those Tor chats, where
9 you create the Tor chat that showed that myself was you, right,
10 on the Tor chat? Do you know what I'm talking about? You
11 testified about that on direct.

12 A. Yes.

13 Q. So you set up your computer with Ubuntu, right?

14 A. Yes.

15 Q. And Linux, right, which Ubuntu runs on?

16 A. They run the same, yes.

17 Q. Do you know how Mr. Ulbricht's laptop was set up, in other
18 words, the methodology of how the Tor chat program was
19 installed?

20 A. No.

21 Q. And, in fact, Linux is highly customizable, right,
22 meaning -- withdrawn.

23 A user who installs Linux has a lot of options,
24 correct?

25 A. Yes.

Flmdulb2

Kiernan - cross

1 Q. And can make a custom version for themselves based on a lot
2 of variables?

3 MR. HOWARD: Objection to form.

4 THE COURT: Sustained.

5 Q. A user of Linux has a lot of options of features to put on
6 their system and how they get on the system, correct?

7 MR. HOWARD: The same objection, your Honor.

8 THE COURT: I will allow this one question.

9 A. Yes. You can customize your install.

10 Q. And there is something called a kernel, correct,
11 k-e-r-n-e-l?

12 A. That's correct.

13 Q. That is an essential part of the Linux operating system?

14 A. Yes.

15 Q. And the composition of the kernel is also a critical factor
16 in terms of its customizing, correct?

17 MR. HOWARD: Objection. Beyond the scope.

18 THE COURT: Sustained.

19 MR. DRATEL: Your Honor, he did an experiment --

20 THE COURT: Sustained.

21 MR. DRATEL: He --

22 THE COURT: Sustained.

23 Q. In your experiment, do you know -- you used a bundle of
24 Linux -- or Tor chat, right? Withdrawn.

25 Linux is an open-source program, correct?

Flmdulb2

Kiernan - cross

1 A. Yes.

2 Q. It is available for free on the Internet, right?

3 A. Yes.

4 Q. And both Linux and Ubuntu are perhaps not as popular as
5 Windows but they're popular, right?

6 MR. HOWARD: Objection.

7 THE COURT: Sustained.

8 Q. The Linux kernel is essentially the glue that holds the
9 software and the hardware together, right, for Linux?

10 MR. HOWARD: The same objection.

11 THE COURT: Sustained. Stay within the scope of the
12 direct.

13 MR. DRATEL: Your Honor, this is within the scope.

14 THE COURT: Sustained.

15 MR. DRATEL: Can I have another sidebar, please?

16 THE COURT: No. Move on to your next line of
17 questioning.

18 BY MR. DRATEL:

19 Q. So you don't know if the kernel that Mr. Ulbricht had --

20 THE COURT: Leave "the kernel."

21 Q. You used a Tor chat -- withdrawn.

22 You downloaded Tor chat through something called the
23 Debian package, correct, D-e-b-i-a-n?

24 A. And AppGet, yes.

25 Q. I missed that last one.

Flmdulb2

Kiernan - cross

1 A. The install command is AppGet.

2 Q. Oh, OK. But that's a preconfigured package that has all of
3 the Tor chat elements in it and you just put it right in on the
4 machine, right?

5 A. Yes.

6 Q. OK. But it can also be done in sort of a DIY, do it
7 yourself, where a user can take code and put it in separately.
8 They don't even have to buy the package as a bundle. They can
9 do it on their own with the various components, correct?

10 MR. HOWARD: Objection. Beyond the scope and
11 foundation.

12 THE COURT: Sustained.

13 MR. DRATEL: Your Honor, it's not beyond the scope.

14 THE COURT: Sustained.

15 MR. DRATEL: May I be heard?

16 THE COURT: No. You can be heard on this at the next
17 break. Go on to your next line of questioning.

18 BY MR. DRATEL:

19 Q. So in the experiment that you described yesterday, you
20 don't know that the way that you installed Tor chat on your
21 computer and the version of Tor chat was the same as that on
22 Mr. Ulbricht's computer, right?

23 A. That's right.

24 (Continued on next page)

25

Flmgulb3

Kiernan - cross

1 BY MR. DRATEL:

2 Q. So, the experiment that you ran -- withdrawn.

3 The purpose of a scientific experiment is to try to
4 replicate as much as possible - and frankly completely - all of
5 the elements of one set of events so that you can match them to
6 a second set, right?

7 MR. HOWARD: Objection.

8 THE COURT: Sustained.

9 Q. If an experiment doesn't have the same elements in it to
10 get to a result, it's not a valid experiment, is it?

11 THE COURT: Why don't you ask it in terms of the
12 experiment he did.

13 MR. DRATEL: Yes. That's what I'm trying to do.

14 THE COURT: No. You're saying "if an experiment."
15 Not any generalized experiment. Talk to him about the
16 experiment he did.

17 MR. DRATEL: That's what I was doing before. That's
18 exactly what I was doing before.

19 THE COURT: Try again.

20 Q. In your experiment, Tor chat is an essential element of
21 your experiment, correct?

22 A. Not essential, but it's -- the download was important to
23 get, yes.

24 Q. Could you have done it without Tor chat?

25 A. I needed Tor chat to run -- it wasn't an experiment. I

Flmgulb3

Kiernan - cross

1 wanted to make sure that the log files, what directory they
2 would start in and if logging was enabled by default. Nothing
3 more complicated than that.

4 Q. You were trying to create a Tor chat so you could see if
5 "myself" was you on the Tor chat, correct?

6 A. That was part of it; yes.

7 Q. So you needed Tor chat for that, right?

8 A. Yes.

9 Q. There are different versions of Tor chat, correct?

10 A. I don't know how many versions there are of Tor chat.

11 Q. And you have no idea what version Mr. Ulbricht downloaded?

12 A. I don't know, no.

13 Q. And you don't know whether he downloaded it through a
14 Debian package or whether he did it himself by taking
15 components off the Internet and making the Tor chat program
16 accessible on his computer, right?

17 A. That's right.

18 Q. So, when you do an experiment like that, the experiment
19 that you did, if you don't know what went into it, how can you
20 verify what came out of it?

21 A. "Myself" is the user of the computer.

22 Q. On the one that you did, correct?

23 A. On the one that I did.

24 Q. And you didn't do it on the one that Mr. Ulbricht's laptop
25 had, right?

Flmgulb3

Kiernan - cross

1 A. I didn't do it with the version that he had, or I don't
2 know what version he had on his.

3 Q. Right.

4 A. Right; that correct.

5 Q. Now, Linux -- you talked about creation dates, modification
6 dates, right?

7 A. Yes.

8 Q. Linux has timestamps for three times of files, right, three
9 types of timestamps, correct?

10 A. Yes.

11 Q. One is an "M" time, right?

12 A. Correct.

13 Q. C time, right?

14 A. Yes.

15 Q. And "A" time, right. "M" time is for the modification time
16 of a file, right?

17 A. Yes.

18 Q. When the content of the file was last modified, right?

19 A. That's right.

20 Q. "A" time is for access, right?

21 A. Yes.

22 Q. When the last time it was opened or reviewed, right?

23 A. Accessed.

24 Q. And "C" time is not creation time, correct, Linux doesn't
25 recognize creation time the same way Windows operating systems

Flmgulb3

Kiernan - cross

1 do?

2 A. It does in the ExT4 version of the file system.

3 Q. And when did that come out?

4 A. 2010 I believe.

5 Q. So do you know what was running on Mr. Ulbricht's?

6 A. ExT4; yes.

7 Q. So you're saying that recognized "C" time?

8 A. Oh, yes.

9 Q. That was the creation time?

10 A. Yes.

11 Q. It's not the last time that metadata associated with the
12 file was changed, that's not what "C" time is in a Linux
13 system?

14 A. No.

15 Q. Now, you're familiar with Linux, right, you again have
16 certifications in programs, right?

17 A. Yes.

18 Q. And there's an option on Linux called Touch by which you
19 can change -- you can manipulate these metadata times, right?

20 A. There is. Touch files.

21 Q. So it doesn't have to -- so when something says "May 8,
22 2012," that could have been changed somehow by the Touch
23 system, right?

24 A. You can always change file systems, I mean, times, I mean.

25 Q. So metadata just tells you a number, right? A date, a

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Kiernan - cross

1 time. It doesn't verify that that's the date something
2 actually happened, correct? Right?

3 A. It verifies the time that the files were there and created
4 and modified, but those are -- again, they're editable. Sure.

5 Q. Metadata is editable just like content, right?

6 A. Correct.

7 Q. In the Tor chat files are ordinary text files that can be
8 edited even after they're created, right?

9 A. Yes.

10 Q. So you talked about MD5 Hash values, right?

11 A. Yes.

12 Q. And the files that you took off the computer, you said you
13 had copied a couple of files initially, correct?

14 A. Yes.

15 Q. Before you gave it to Mr. Beeson, right?

16 A. Yes.

17 Q. And you didn't do any hash values for those, right?

18 A. No. I don't have any fields.

19 Q. So just to make clear about the hash values, the hash
20 values you're comparing is not to the laptop itself, correct,
21 it's from the image that Mr. Beeson created, right?

22 A. It's the hash value from his image.

23 Q. Right. So it's not from the laptop. It's from the image?

24 A. The image is from the laptop, right, it's from the image
25 that he created.

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Kiernan - cross

1 Q. The hash value is from his image, right?

2 A. Correct.

3 Q. In other words, you're comparing what you copied on your
4 computer to the image you got from him and they matched, right?

5 A. Yes, yes.

6 Q. Not from the laptop itself?

7 A. That's where the image was created from.

8 Q. But it's not a hash value from the laptop itself?

9 A. No, not from the laptop itself. That's in a
10 different -- that was on the hard drive that came back that was
11 a brick that we couldn't actually look at.

12 Q. Now, by the way, as far as encryption goes, on Ubuntu,
13 this -- the encryption that was running is an option on Ubuntu,
14 right?

15 A. Yes.

16 Q. So anyone who downloads Ubuntu can use that encryption
17 option?

18 A. I'm sorry. Say that again.

19 Q. Anyone who downloads Ubuntu operating system could avail
20 themselves of that encryption option that was on this machine?

21 A. Sure.

22 Q. And you don't know whether closing the laptop would have
23 turned it on, right, made the files unavailable, right? You
24 don't know because you didn't close it, right?

25 A. We closed it later on, and we weren't able to get to any of

Flmgulb3

Kiernan - cross

1 the file systems.

2 Q. And was that -- Mr. Beeson was involved in that?

3 A. Yes.

4 Q. So that was really his work, not yours?

5 A. Well, correct.

6 Q. Right, so that's what you heard?

7 MR. DRATEL: I move to strike that, your Honor, as
8 hearsay.

9 THE COURT: That answer is struck.

10 Q. Now, with respect to hash values, there can be problems
11 with MD5 Hash values, correct?

12 A. Yes. There is a one -- there is an older problem with MD5s
13 that it was able to recreate -- it's one of those long
14 shot-type deals that happened -- that was you're able to create
15 a file and make another MD5 with the same number, but with two
16 different files. It's a known problem.

17 Q. And in fact, there's a better system called SHA1, right?

18 A. Yes.

19 Q. And, in fact, if we look at Government Exhibit 205A -- or
20 201, whichever. Look at 205A or 201. I saw 205A this morning,
21 so that would be easiest.

22 In fact, there's a section for SHA, right?

23 A. Yes.

24 Q. But you didn't do that one. You just did the MD5?

25 A. Yes. We used the MD5. Standard.

Flmgulb3

Kiernan - cross

1 Q. Even though SHA1 is more reliable?

2 A. They're both very reliable.

3 Q. SHA1 is more reliable, correct?

4 A. Yes.

5 Q. Now, let me talk about some of the exhibits that were
6 admitted through you yesterday. If we can go to 240A, please,
7 if we can scroll up a little bit.

8 This is a journal entry that you put in, right?

9 A. Yes.

10 Q. And it's labeled "2010," correct?

11 A. Yes.

12 Q. So if we can go up to the part that the government did not
13 read yesterday. And I'll read it: "Up to this point, I had
14 been working on selling my rental house in Pennsylvania. It had
15 helped me stay afloat with around \$600/mo in Cashflow, but
16 finally the sale came to a close. I made about \$30k off the
17 whole thing, and could finally start trading again. I had been
18 practice trading for a while and saw an opportunity to take my
19 \$30k And make it as a day trader. \$30k isn't alot to start
20 with, and I didn't Get off to a very good start with my
21 trading. Around that time, another opportunity came into my
22 life. Donny Had gotten a job offer from his brother in Dallas
23 to be the VP of sales at Their milling company. He didn't know
24 what to do about Good Wagon which he had grown somewhat to the
25 point that he was making around \$6k per month in sales. He made

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Kiernan - cross

1 me an offer. 50% of the company and a \$3k per month salary to
2 take over and run the business going forward. I took the deal
3 and we went to work on it. By the end of the year, we had our
4 best month on record with about \$10k in sales in December."

5 This is 2010, correct -- go back to the top just for a
6 second -- right?

7 A. Yes.

8 Q. So let's go further down, the next highlighted portion,
9 again not read by the government: "I went through a lot over
10 the year in my personal relationships as well. I had mostly
11 shut myself off from people because I felt ashamed of where my
12 life was. I had left my promising career as a scientist to be
13 an investment adviser and entrepreneur and came up empty
14 handed. More and more my emotions and thoughts were ruling my
15 life and my word was losing power. At some point I finally
16 broke down and realized my love for people again, and started
17 reaching out. Throughout the year I slowly re-cultivated my
18 relationship with my word and started honoring it again."

19 Let's go to 240B. This is "2011" it says, right?

20 A. It does.

21 Q. So let's go to the highlighted portion, again not read by
22 the government yesterday: "At some point, a hacker found some
23 major flaws in my code. I sent it to him for review and he came
24 back with basically "this is amateur shit". I knew it too. I
25 tried to work with him but I think he lost interest and since I

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Kiernan - cross

1 wasn't charging commission, I only had my shroom money to pay
2 him with. Thankfully that quadrupled from bitcoin increasing in
3 price, little did I know I could've cashed out at 8x higher for
4 a total of 32x! That would have gotten me off to a hell of a
5 start. As it was, I cashed out all the way up and all the way
6 down. I called the peak, my timing was just off."

7 If we go down further -- no, I think that's it for
8 that. No. Okay. I'm sorry. I just want to ask you a couple
9 of questions while we're talking.

10 The bitcoin came up. You talked yesterday about cold
11 storage bitcoin, cold storage?

12 A. I did.

13 Q. And the bitcoins don't become physical at that point,
14 right?

15 A. Never physical.

16 Q. They're always digital, right?

17 A. That's right.

18 Q. They're always electronic, they're always in a file, right?

19 A. Yes.

20 Q. Or a wallet, let's say, right?

21 A. Yes.

22 Q. And transactions cashing out of them are going to be
23 registered on the public block chain, right?

24 A. That's right.

25 Q. Let's go up. This is another paragraph or another section

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Kiernan - cross

1 not read by the government: "It looked like I didn't have to
2 process the transactions manually anymore, but then the rot
3 started. Some where the site accounting wasn't balancing and I
4 was losing hundreds of dollars every few hours. I started to
5 panic. I tried everything I could think of, but couldn't stop
6 the bleeding. It was getting to the thousands of dollars and I
7 was losing sleep and getting slow. I didn't give up though. I
8 rewrote the entire transaction processor from scratch and some
9 how it worked. To this day I don't know what the problem was."

10 Now, I want to look at 232A which is a Tor chat. This
11 is March 14, 2012?

12 A. Yes.

13 Q. And it's between "da" and it says "myself," right?

14 A. Yes.

15 Q. And it says "We might want to construct a new identity for
16 you though," right.

17 A. That's what it says; yes.

18 Q. And if you go down further and the person asks "IRL or
19 online."

20 IRL means in real life?

21 A. Oh. You're asking?

22 Q. IRL?

23 A. Yes. I'm sorry.

24 Q. "Or online," right? DA is asking "myself," I guess that's
25 Dread Pirate Roberts, right?

Flmgulb3

Kiernan - cross

1 MR. HOWARD: Objection; foundation.

2 THE COURT: Overruled. Why don't you just reask the
3 question attached to this.

4 MR. DRATEL: Sure.

5 Q. IRL to your knowledge is in real life?

6 A. In real life; yes.

7 Q. And in this chat, DA asks Dread Pirate Roberts "IRL or
8 online," right?

9 A. Yes.

10 Q. Distinguishing the two things, right?

11 A. Yes.

12 Q. Real life from online?

13 THE COURT: Hold on. He can't testify as to what was
14 meant by these people, but he can say what the word "IRL" means
15 to him.

16 Q. And Dread Pirate Roberts answers no, just online. My
17 concern is that LE, and that's law enforcement, right?

18 THE COURT: Hold on. He's not going to interpret what
19 the writers meant. He didn't do it yesterday. He's not going
20 to do it today. You can put somebody else on the stand to do
21 that.

22 Q. "My concern is that LE will see that DA is a player at Silk
23 Road by your forum presence and then track down who you bought
24 from, and sold to under that name and then find you irl."

25 Now, that application for the Island of Dominica that

Flmgulb3

Kiernan - cross

1 you looked at yesterday, right --

2 A. Yes.

3 Q. -- all of the personal identifying information with respect
4 to Mr. Ulbricht that was in there - name, address, social
5 security - all the things in there was all accurate, wasn't it?

6 MR. HOWARD: Objection.

7 THE COURT: Sustained.

8 Q. Do you know of any of it that was inaccurate?

9 MR. HOWARD: Objection.

10 THE COURT: Sustained.

11 Q. Did you check as to the accuracy of any of that
12 information?

13 THE COURT: I'll allow that.

14 A. Personally, no.

15 Q. And in that document, he provides references, right,
16 persons, correct?

17 A. Correct.

18 MR. DRATEL: Nothing further.

19 THE COURT: Thank you.

20 Any redirect?

21 MR. HOWARD: Thirty seconds if you don't mind. It
22 will be very brief, your Honor.

23 THE COURT: All right. Redirect examination.

24 REDIRECT EXAMINATION

25 BY MR. HOWARD:

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Kiernan - redirect

1 Q. On cross-examination, you testified about BitTorrent,
2 correct, BitTorrent?

3 A. I did.

4 Q. And BitTorrent was on the defendant's computer, correct?

5 A. It was, yes.

6 Q. And it's basically a file-sharing program?

7 A. Yes.

8 Q. You can --

9 MR. DRATEL: Objection.

10 THE COURT: Sustained.

11 Let's put it this way: You had better state very
12 carefully with only the limited amount that was opened by the
13 defendant. Don't go beyond that.

14 Q. Did you look at the settings of the BitTorrent program on
15 the defendant's computer?

16 A. Yes.

17 Q. Did you see where -- what the settings indicated about
18 where files downloaded to the defendant's computer would go?

19 A. Yes.

20 Q. And what folder did that indicate the files would go?

21 A. The home/frosty/downloads folder.

22 Q. Did you look at the contents of that folder?

23 A. Yes.

24 Q. And what was contained within that folder?

25 A. Movies, books, things to that nature.

Flmgulb3

Kiernan - redirect

1 Q. Were any of the files that were admitted as exhibits during
2 your direct examination found in that folder?

3 A. No.

4 Q. You testified about the Tor chats on cross-examination,
5 correct?

6 A. I did.

7 Q. And you've logged your own Tor chats, is that right?

8 A. I have.

9 Q. And have the logs of those Tor chats been true and accurate
10 transcriptions of the Tor chats that you have had?

11 A. Yes.

12 Q. And you found the Tor chats we put in on direct
13 examination, you found them on the defendant's computer,
14 correct?

15 A. I did.

16 MR. DRATEL: Objection.

17 THE COURT: Overruled.

18 You may proceed.

19 A. Yes.

20 Q. You testified on direct that you found encryption -- an
21 encryption process was active on the computer, correct?

22 A. Correct, yes.

23 Q. If the defendant had been able to close his computer before
24 he was arrested, would you have been able to access the Tor
25 chat files?

Flmgulb3

Kiernan - redirect

1 MR. DRATEL: Objection; objection.

2 THE COURT: I will allow it.

3 A. No.

4 MR. HOWARD: Let me check with cocounsel and see if
5 there's anything else, but I think we're done.

6 No further questions.

7 THE COURT: Mr. Dratel.

8 RECROSS EXAMINATION

9 BY MR. DRATEL:

10 Q. To be clear about the last point, you didn't close the
11 laptop, correct?

12 A. Correct.

13 Q. So you don't have any personal knowledge as to what would
14 have happened had that laptop been closed, right?

15 A. I know when I got it back --

16 Q. No.

17 A. Personal, no.

18 MR. HOWARD: No further questions.

19 THE COURT: He may still be going.

20 MR. HOWARD: Pardon me.

21 Q. Now, you testified about BitTorrent on redirect about
22 files, about download destination, right?

23 A. Yes.

24 Q. But you can't sit here now and testify that you know all of
25 the activity that went on through that open port on that

Flmgulb3

Kiernan - recross

1 computer, either that day or some other day when he was
2 downloading something else?

3 A. Not from the whole time period.

4 Q. Right.

5 A. But that's a BitTorrent --

6 Q. But that's a BitTorrent, but the port is open and it gives
7 access to the computer, correct?

8 A. It gives access to the BitTorrent client.

9 Q. Right. But people who -- and that means those seven users
10 out there who have it, right, who are connected?

11 A. That's right.

12 Q. And as we said before, it could contain all sorts -- that
13 anything you download, can contain all sorts of malware, right,
14 malicious --

15 A. Possible.

16 Q. -- malicious software that can be used against the person
17 who is operating the computer, right?

18 MR. HOWARD: Objection.

19 THE COURT: Sustained.

20 MR. DRATEL: I have nothing further.

21 THE COURT: Thank you.

22 Anything further, Mr. Howard, like one question?

23 MR. HOWARD: Yes. It is one question -- two
24 questions, but start with one.

25 REDIRECT EXAMINATION

Flmgulb3

Kiernan - redirect

1 BY MR. HOWARD:

2 Q. Mr. Kiernan, did you review the contents of the defendant's
3 computer for malware?

4 A. Yes.

5 Q. Did you find any --

6 THE COURT: I stopped Mr. Dratel on the malware.

7 MR. HOWARD: I'm sorry. Withdrawn. No further
8 questions.

9 THE COURT: Thank you.

10 You may step down.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: Would the government like to call its next
14 witness, please.

15 MR. HOWARD: The government is calling Special Agent
16 Greg Fine. We're getting him right now.

17 (Witness sworn)

18 THE COURT: Mr. Fine, please be seated. And it will
19 be important for you to pull up your chair and adjust the
20 microphone so that you can speak clearly and directly into the
21 mic.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Turner, you may proceed.

24 MR. TURNER: Thank you.

25 GREGORY FINE,

Flmgulb3

Kiernan - redirect

1 called as a witness by the Government,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. TURNER:

5 Q. Thank you. Good afternoon, Special Agent fine.

6 A. Good afternoon.

7 Q. Where do you work?

8 A. For the Federal Bureau of Investigation.

9 Q. What is your position there?

10 A. I'm a special agent.

11 Q. And what office of the FBI are you in?

12 A. The San Francisco division.

13 Q. Were you one of the agents involved in the search of Ross
14 Ulbricht's residence following his arrest on October 1, 2013?

15 A. I was.

16 Q. And was that search pursuant to a search warrant?

17 A. Yes.

18 Q. What was the address of the residence?

19 A. 235 Monterey Boulevard in San Francisco, California.

20 Q. And were you able to locate the defendant's bedroom in the
21 residence?

22 A. Yes.

23 Q. And how were you able to do so?

24 A. During the search, we found some of his personal effects.

25 Q. Like?

Flmgulb3

Fine - direct

1 A. We found his Texas driver's license and his passport.

2 Q. And did you find any computer devices in the bedroom?

3 A. Yes.

4 Q. What did you find?

5 A. Found two thumb drives.

6 Q. What are thumb drives?

7 A. They're USB devices so essentially storage for -- storage
8 for digital files.

9 Q. And you plug them into a computer?

10 A. Yes.

11 MR. TURNER: May I approach.

12 THE COURT: You may.

13 Q. I'M showing you what's been marked as Government
14 Exhibit 502. It's already been admitted into evidence.

15 Do you recognize what I've shown you?

16 A. I do.

17 Q. How do you recognize it?

18 A. These are the two USB drives that we found in
19 Mr. Ulbricht's room.

20 Q. Where did you find them?

21 A. On the nightstand.

22 Q. And what did you do with them after you found them?

23 A. We seized them pursuant to the search warrant, we packaged
24 them up and I transported them to the evidence room in San
25 Francisco.

Flmgulb3

Fine - direct

1 MR. TURNER: No further questions, your Honor.

2 THE COURT: Thank you.

3 Mr. Dratel.

4 MR. DRATEL: No questions, your Honor.

5 THE COURT: Thank you. You may step down, sir.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 THE COURT: Would the government like to call its next
9 witness, please.

10 MR. HOWARD: The government would call Richard Bates.

11 THE COURT: All right.

12 (Pause)

13 THE COURT: Mr. Bates.

14 (Witness sworn)

15 THE COURT: Mr. Bates, please be seated, sir.

16 It will be important for you to pull yourself up so
17 you can speak directly into the mic.

18 Mr. Howard.

19 MR. HOWARD: Thank you, your Honor.

20 RICHARD CHAPMAN BATES,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HOWARD:

25 Q. Good afternoon, Mr. Bates.

Flmgulb3

Bates - direct

1 A. Good afternoon.

2 Q. How old are you?

3 A. I am 31 years old.

4 Q. And where do you currently live?

5 A. I currently live in Austin, Texas.

6 Q. And where do you work?

7 A. I work for eBay.

8 Q. And what do you do for a living?

9 A. I am a software engineer.

10 Q. Are you familiar with Ross Ulbricht?

11 A. Yes, I am.

12 Q. And how are you familiar with him?

13 A. I went to college with him at the University of Texas at
14 Dallas, and then I have reunited or rekindled our friendship
15 when I moved to Austin in 2010.

16 Q. When did you first meet the defendant?

17 A. That would be sometime in the summer of 2002 when I was
18 just now starting college, freshman year.

19 Q. What did you study in college?

20 A. I studied computer science.

21 Q. And what did the defendant study in college?

22 A. He studied physics.

23 Q. Do you see Mr. Ulbricht sitting in the courtroom today?

24 A. Yes, I do.

25 Q. Could you please identify him by something he's wearing?

Flmgulb3

Bates - direct

1 A. It looks like he's got a gray sweater on and, what is that,
2 a red and black-striped tie, I believe.

3 MR. HOWARD: Will the record please reflect that the
4 witness has identified the defendant.

5 THE COURT: So reflected.

6 Q. Now, Mr. Bates, I want to direct your attention to 2011.

7 A. Okay.

8 Q. Did the defendant share a secret with you?

9 A. Yes, he did.

10 Q. And what was the secret?

11 A. He shared with me that he created and ran the Silk Road
12 website.

13 Q. And what was the Silk Road website?

14 A. It was a Tor-based website where people could buy and sell
15 drugs.

16 Q. And why did the defendant share this secret with you?

17 MR. DRATEL: Objection.

18 THE COURT: Sustained.

19 Q. Did you provide -- did the defendant tell you why he told
20 you the secret?

21 A. I issued him basically an ultimatum because he wanted
22 programming assistance. That's why he told me about it.

23 Q. Did you provide help?

24 A. Yes, I did.

25 Q. And for how long did you provide help?

Flmgulb3

Bates - direct

1 A. I provided help unknowingly in 2010; and then during 2011,
2 I knew for a while and that went on into the summer of 2011.

3 Q. So we'll circle back to discuss that more in detail later.

4 Turning your attention to October 2013, did you learn
5 at some point the defendant got arrested?

6 A. Yes, I did.

7 Q. After that, did you talk to any law enforcement agents?

8 A. Yes.

9 Q. To be clear, did law enforcement agents come to you or did
10 you reach out to law enforcement agents?

11 A. They came to me.

12 Q. And where did this occur?

13 A. This occurred just outside my apartment.

14 Q. And can you describe what happened during that encounter?

15 A. To put it succinctly, I lied to them.

16 Q. What happened?

17 A. They, you know, asked me what I knew about Ross. And I
18 said, you know, I didn't know that he was working on the Silk
19 Road when I knew that he was.

20 Q. And why did you do that at the time?

21 A. Because I was scared.

22 Q. Now, are you testifying here today in part based on an
23 agreement with the government?

24 A. Yes, I am.

25 Q. And what kind of agreement is that?

Flmgulb3

Bates - direct

1 A. It's a nonprosecution agreement.

2 Q. And what is your understanding of what your obligations are
3 under the agreement?

4 A. My understanding is that my obligations are, you know, to
5 meet with prosecutors, to tell them the truth, and to tell the
6 truth to this Court here today.

7 Q. Now, what is your understanding of what the government will
8 do if you fulfill your part of the agreement?

9 A. That they will not prosecute me for three specific things:
10 The technical assistance that I gave Ross that he used to, you
11 know, run the Silk Road; they will not prosecute me for the
12 work I did with Ross where we tried to create a bitcoin
13 exchange; and they will not prosecute me for drugs that I
14 purchased for personal use.

15 Q. Now, let's talk a little bit about your personal use of
16 drugs. What kind of drugs have you used?

17 A. I have used marijuana, MDMA, psychedelic mushrooms, Vicodin
18 and one time I purchased antibiotics.

19 Q. When did you first start using illegal drugs?

20 A. It was soon after graduating in 2007.

21 Q. And what were your sources for these illegal drugs?

22 A. At what time?

23 Q. After 2011.

24 A. After 2011, I was buying drugs on the Silk Road primarily.

25 Q. How did you learn about the Silk Road?

Flmgulb3

Bates - direct

1 A. I learned about the Silk Road when Ross told me about it.

2 Q. And what was your username on Silk Road?

3 A. My username was mêlée spelled M-E-L-E-E.

4 Q. What kinds of narcotics did you purchase from Silk Road?

5 A. I -- basically the list I had gone over before, that would
6 be, you know, marijuana, MDMA, mushrooms, Vicodin and
7 antibiotics.

8 Q. Focusing for a second on mushrooms, when was the first time
9 you used them?

10 A. The first time I used them was in 2011. I tried a very
11 small amount that Ross had given me.

12 Q. Do you remember that incident when you -- when he gave you
13 those mushrooms?

14 A. Yes, I do. He had a large, black trash bag that was, you
15 know, running kind of empty. It looked like it had been full
16 at some point --

17 MR. DRATEL: Objection.

18 THE COURT: Sustained.

19 You can continue.

20 THE WITNESS: Do I just continue?

21 THE COURT: Just pick up.

22 THE WITNESS: Okay. Give me one second.

23 A. So, yeah, I got them from him. He told me they were kind
24 of old, but I could have some if I wanted any, and he gave me a
25 small Ziploc bag with them in it.

Flmgulb3

Bates - direct

1 Q. Did the defendant have any discussions with you about where
2 he got those mushrooms from?

3 A. He told me that he had grown them.

4 Q. During 2011, how frequently were you using illegal drugs?

5 A. During 2011, not that frequently. I'd say, you know, you
6 know once every couple months.

7 Q. Approximately when was the last time you used illegal
8 drugs?

9 A. That would be in the summer of 2013.

10 Q. Now earlier you described that you first met the defendant
11 in college, correct?

12 A. That is correct.

13 Q. When did you graduate from college?

14 A. I graduated in 2007.

15 Q. And where did you live immediately after graduating?

16 A. I lived in the Dallas/Ft. Worth area.

17 Q. Do you know where the defendant went after college?

18 A. He went to Pennsylvania for graduate work.

19 Q. Do you know where he went to graduate school?

20 A. I believe it was Penn State.

21 Q. Did you stay in touch with the defendant after he moved to
22 Penn State?

23 A. We were, you know, Facebook friends. We kind of stayed in
24 touch that way.

25 Q. And earlier, you testified that you reconnected with him

Flmgulb3

Bates - direct

1 when you moved to Austin?

2 A. Yes, that's correct.

3 Q. Can you describe what happened.

4 A. I -- when I moved to Austin, I looked at my Facebook page
5 and I said well, who do I know that lives in Austin and I saw
6 that Ross lived there, and, you know, I remembered we had hung
7 out a couple of times, we went on a spring break trip. And I
8 said hey, man, I'm moving down to Austin and we should hang
9 out. And then after I moved down, we, you know, that's what we
10 did. We hung out. We went cliff-jumping a few weeks later.

11 Q. And in late 2010, how frequently did you see the defendant?

12 A. In late 2010, I'd say weekly.

13 Q. Were you aware of what the defendant did for a living back
14 then?

15 A. At that time, I -- my understanding was that he had a book
16 business called Good Wagon Books, and I also saw him editing
17 some academic papers, and my understanding was he was being
18 compensated for that, as well.

19 Q. Was the defendant familiar with the fact that you were a
20 computer programmer?

21 A. Yes, he was.

22 Q. During late 2010, did you have any discussions with the
23 defendant regarding computer programming?

24 A. I'm sorry. What was the year again?

25 Q. Late 2010?

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Bates - direct

1 A. Late 2010? Yes.

2 Q. And generally what kinds of discussions were you having?

3 A. In late 2010, he was asking me some PHP programming
4 questions, a few questions about server administration.

5 Q. Could you please flip in your binder to what's been marked
6 for identification purposes to Government Exhibit 1000.

7 A. Yes.

8 Q. Do you recognize this exhibit?

9 A. Yes, I do.

10 Q. And what is it?

11 A. This is a Google chat conversation between Ross and me.

12 Q. And what is a Google chat conversation?

13 A. It's, you know, a text-based communication, you can go
14 through the website or your phone and talk to another person
15 via text.

16 MR. HOWARD: The government offers Government
17 Exhibit 1000.

18 THE COURT: Mr. Dratel.

19 MR. DRATEL: I just need to look. The numbers have
20 changed. So I just need to go back and find them.

21 Vayner and hearsay, your Honor.

22 THE COURT: Those objections are overruled.
23 Government Exhibit 1000 is received.

24 (Government's Exhibit 1000 received in evidence)

25 MR. HOWARD: Ms. Rosen, can you please publish

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Bates - direct

1 Government Exhibit 1000. Can you zoom in on the top of the
2 message, please.

3 Q. Mr. Bates, here it says at the top "Subject: Chat with
4 baronsyntax@gmail.com."

5 What is baronsyntax@gmail.com?

6 A. That is my personal email address.

7 Q. Down on the "to" line it says "To rossulbricht@gmail.com."

8 What is rossulbricht@gmail.com?

9 A. That's Ross' email address.

10 Q. And what was the date of this chat communication?

11 A. This was October 25, 2010.

12 MR. HOWARD: Now, Mr. Evert, can you please scroll
13 down to the body of the message, please and zoom in down to
14 here, please.

15 Q. There are references in this messaging to baronsyntax.
16 What does that refer to?

17 A. Those are the parts of the conversation that I wrote.

18 Q. And how about the parts that are labeled as "me"?

19 A. Those are the parts that Ross wrote.

20 Q. "Me: howdy

21 Baronsyntax: hey

22 Me: what's the latest?

23 Me: make it to work?

24 Baronsyntax: yeah, it seems to be running just fine
25 now." Emoticon.

Flmgulb3

Bates - direct

1 "Me: sweet

2 Me: mind a programming queastion?

3 Baronsyntax: No queastions please. but you can ask me
4 a ques..on if you'd likfe." Emoticon.

5 "Baronsyntax: I am the grammar facists

6 Me: i can tell." Emoticon.

7 "Me: ok

8 Me: log() is included in Math::Trig in perl, but my
9 admin won't include the module..." And then there's some more
10 discussion.

11 Can you describe what is happening in this
12 conversation?

13 A. Yes. He's having an issue with perl, and there's a library
14 function that he wants to use but can't and is asking me if
15 there's another way to use it. I'm providing assistance to
16 him.

17 Q. Is this the only time the defendant asked you for help with
18 computer programming?

19 A. No.

20 Q. How frequently would he ask you for help in late 2010?

21 A. In late 2010, it was very frequent.

22 Q. How about early 2011, was he still asking you questions
23 regarding programming?

24 A. Yes.

25 Q. During this time period, did you know what the defendant

Flmgulb3

Bates - direct

1 was working on?

2 A. If we're talking about early 2011?

3 Q. That's correct.

4 A. Not -- I believe the time that I knew about it was late
5 February/early March of 2011.

6 Q. But before that --

7 A. No, I didn't.

8 Q. -- did you have any discussion about what he was working
9 on?

10 A. Yes, I did. And I asked him, you know, basically what are
11 you working on and he told me it was top secret.

12 Q. Can you please flip now in your binder to what's been
13 marked for identification purposes as Government Exhibit 1001.
14 Do you recognize this exhibit?

15 A. Yes, I do.

16 Q. And what is it?

17 A. It's another Google chat conversation between Ross and me.

18 MR. HOWARD: The government offers Government
19 Exhibit 1001.

20 MR. DRATEL: The same as the previous objections.

21 THE COURT: Those objection are overruled.

22 GX 1001 is received.

23 (Government's Exhibit 1001 received in evidence)

24 MR. HOWARD: Mr. Evert, can you please publish
25 Government Exhibit 1001.

Flmgulb3

Bates - direct

1 Q. What is the date of this chat communication, Mr. Bates?

2 A. This is February 28, 2011.

3 Q. To be clear, are the names and the parts of the
4 conversation labeled just like the last one we looked at?

5 A. Yes.

6 Q. Baronsyntax is you and "me" is the defendant, correct?

7 A. That's correct.

8 MR. HOWARD: "Baronsyntax: I'm officially forbidding
9 you from mentioning your secret project to me again unless you
10 are going to reveal it.

11 Me: Can I ask you programming questions for "no
12 particular reason".

13 Baronsyntax: Yea."

14 Q. So Mr. Bates, what was going on in this conversation?

15 A. This was kind of the build-up to where I issued him an
16 ultimatum not long after this where I told him that he needs to
17 either tell me what he's doing or leave me out of it. I kind
18 of became a little suspicious. I thought he might be trying to
19 hack into some website or something, but the fact that he just
20 said top secret worried me a little bit.

21 Q. And after you gave the ultimatum, what happened?

22 A. He was in my apartment and I told him tell me about it or
23 leave me out of it, and he told me about it. And he said
24 something along the lines of, you know, it's a -- I'm working
25 on a website where people can buy drugs. Then he had his

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Bates - direct

1 laptop at the time and he showed me the Silk Road homepage for
2 the first time.

3 Q. Did he use your Internet when he did this?

4 A. No, he didn't. We were worried that it might somehow be
5 traced back to me, so I told him one of my neighbors had an
6 open Wi-Fi network.

7 Q. And what do you mean by an open Wi-Fi network?

8 A. I mean a Wi-Fi network that doesn't have password
9 protection and it was, you know, one of my neighbor's Internet
10 access.

11 Q. And what did the defendant show you about the website?

12 A. I remember seeing the homepage, I remember seeing the green
13 camel for the first time and pictures of drugs.

14 Q. What was your reaction when you first learned about this?

15 MR. DRATEL: Objection.

16 THE COURT: Overruled.

17 A. So -- sorry, what was the question again?

18 Q. What was your reaction when you first learned?

19 A. I was shocked but I was also very intrigued because, I
20 mean, I didn't know how this, you know, could be even possible.
21 I think my immediate reaction was they're going to shut this
22 thing down really, really soon, and that's when he first
23 explained Tor to me and he told me it accepted payment in
24 bitcoin.

25 Ross had told me about bitcoin before, but I didn't

Flmgulb3

Bates - direct

1 really listen to it and now I was very much paying attention.

2 Q. At the time you had this conversation, had you heard of Tor
3 before?

4 A. No.

5 Q. And what did the defendant tell you about Tor?

6 A. Basically that it's, you know, a network that anonymizes or
7 tries to anonymize web traffic.

8 MR. HOWARD: Your Honor, may I approach.

9 THE COURT: You may.

10 Q. Mr. Bates, I'm handing you what's been marked for
11 identification purposes as Government Exhibit 1005.

12 A. Yes.

13 Q. Do you recognize what this is?

14 A. Yes, I do.

15 Q. And what is it?

16 A. This is a recording of a voicemail that Ross left me on
17 2011.

18 Q. Do you remember the date that this voicemail was left?

19 A. I believe it was March 15, 2011.

20 Q. And do you remember what time of day this was
21 approximately?

22 A. It was just after 6:00 p.m. central Time I believe.

23 Q. Are you familiar with the defendant's voice?

24 A. Yes, I am.

25 Q. How do you know that this CD, this exhibit, this thing in

Flmgulb3

Bates - direct

1 front of you contains that recording?

2 A. Yesterday we went over it and they had me listen to it to
3 confirm that it was a voicemail, and I initialed and dated it
4 right there.

5 MR. HOWARD: The government offers Government
6 Exhibit 1005.

7 MR. DRATEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 1005 received in evidence)

10 MR. HOWARD: May I approach, your Honor.

11 THE COURT: You may.

12 MR. HOWARD: Mr. Evert, can you please play the
13 recording.

14 (Audio recording played)

15 (Continued on next page)

Flmgulb3

Bates - direct

1 MR. HOWARD: I'm sorry. Would you please play the
2 recorder.

3 (Audio played)

4 THE WITNESS: Something went wrong.

5 (Audio replayed)

6 BY MR. HOWARD:

7 Q. What happened after this voicemail was left for you?

8 A. Not long after that we communicated on Google Chat about a
9 problem he was having with the Silk Road being down.

10 Q. Would you please flip in your binder to what's been marked
11 for identification purposes as Government Exhibit 1006.

12 (Pause)

13 Do you recognize what this is?

14 A. Yes, I do.

15 Q. And what is it?

16 A. This is another Google Chat conversation between Ross and
17 me that happened shortly after that voicemail was recorded.

18 MR. HOWARD: The government offers Government Exhibit
19 1006.

20 MR. DRATEL: The same objections.

21 THE COURT: Those objections are overruled. GX1006 is
22 received.

23 (Government's Exhibit 1006 received in evidence)

24 BY MR. HOWARD:

25 Q. Now, Mr. Bates, what was the date and time of this

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Bates - direct

1 conversation?

2 A. This is March 15, 2011, and if my time conversion is
3 correct, this is 6:36 p.m. Central Time.

4 Q. When you say "conversion," what are you referring to?

5 A. It's listed on the paper as being Pacific Daylight Time,
6 and I'm converting it to Central Time, which is where Ross and
7 I were both located, in that time zone at the time.

8 Q. And this is shortly after that voicemail we just played,
9 correct?

10 A. That is correct.

11 Q. And are the parts of the conversation labeled just like the
12 others we reviewed earlier?

13 A. Yes, they are.

14 Q. You are "baronsyntax" and the defendant is labeled as "me."

15 A. That is correct.

16 Q. "Baronsyntax: What's the problem?

17 "Baronsyntax: You happened to call when I was in the
18 bathroom

19 "Me: My site is down and I don't know why. Too much
20 traffic I think. I get an error about too many open connectons.
21 Might be my amature coding left open connections everywhere,
22 don't know

23 "Baronsyntax: What kind of connections?

24 "Me: Doesn't say. Maybe mysql

25 "Baronsyntax: ok, so you've got some requests that

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Bates - direct

1 leaves a mysql transaction open - is that what you're thinking?

2 "Baronsyntax: Are you looking at apache logs or what

3 "Baronsyntax: I don't have any frame of reference here

4 "Baronsyntax: Would it be better if I called?

5 "Me: Yea, if you can I don't want to be a nuisance"

6 So what happened during this part of the -- during
7 this conversation, Mr. Bates?

8 A. During this conversation he tells me that the Silk Road is
9 down and he's speculating as to why that might be. And then
10 I'm trying to help him figure it out. I'm basically trying to
11 troubleshoot.

12 Q. And what was your understanding of what the defendant was
13 referring to when he said "my site is down"?

14 A. That was the Silk Road. Frequently, when we were talking
15 in Google Chat, we would refer to it as "the" site or "my" site
16 by the defendant.

17 Q. Is there a reason you did it that way?

18 A. Because we knew that, you know, this is something that
19 if -- I guess if someone was reading the conversation, since
20 this is over -- this is not encrypted protocol, that we didn't
21 want them to know that we were talking about Silk Road.

22 Q. What do you mean by an encrypted protocol?

23 A. An encrypted protocol would be, you know, software that has
24 some precautions in it that are designed to prevent anyone
25 except the intended recipient from reading the message.

Flmgulb3

Bates - direct

1 Q. Now, if you could please flip to what's been marked in
2 there for identification -- sorry, marked in your binder for
3 identification purposes as Government Exhibit 1007.

4 Do you recognize what this is?

5 A. Yes, I do.

6 Q. And what is this?

7 A. This is another Google Chat conversation between Ross and
8 me that happened I think a few hours after the last one that we
9 looked at.

10 MR. HOWARD: The government offers Government Exhibit
11 1007.

12 MR. DRATEL: The same objections, your Honor.

13 THE COURT: Those objections are overruled. GX1007 is
14 received.

15 MR. HOWARD: Mr. Evert, could you please publish
16 Government Exhibit 1007 and zoom in on the message.

17 Q. Mr. Bates, you testified this happened the same night
18 following the previous conversation, correct?

19 A. That's correct.

20 Q. So I'm not going to even try to read the first four lines
21 labeled "baronsyntax." Could you just describe what's going on
22 overall here?

23 A. You know, I have to -- this was a while ago, but I believe
24 what's happening here is I'm giving him commands to run on his
25 server terminal. I know tail dash F is a way of looking at the

Flmgulb3

Bates - direct

1 output of a file realtime, and that's used for log files so
2 that you can see them as they're being updated. Lsof is a, you
3 know, either a UNIX or Linux program that lists the open files
4 on a system. And here I'm telling him, you know, tell me what
5 files are open and search for php -- that's what that "grep
6 php" is. In essence, I'm trying to help him figure out why the
7 site is down.

8 Q. By "the site," you mean Silk Road?

9 A. Yes.

10 Q. The last two lines of this chat go:

11 "Baronsyntax: My neighbor has an open Wi-Fi network

12 "Me: Sounds good." Emoticon.

13 What were you discussing here?

14 A. I believe that we were talking about either him coming over
15 to my place or me going over to his place. It sounds like if I
16 say my neighbor has an open Wi-Fi network, we were at least
17 entertaining him coming over to my place.

18 Q. Why were you telling the defendant that you had an open
19 Wi-Fi network?

20 A. Well, my neighbor has the open Wi-Fi network. This is,
21 again, related to, you know, it not being traceable back to,
22 you know, any of us. It would be -- if they did trace back the
23 connection, it would go back to my neighbor and not either of
24 us.

25 Q. You had your own Internet connection at this time, correct?

Flmgulb3

Bates - direct

1 A. That is correct.

2 Q. Now, Mr. Bates, would you please flip in your binder to
3 what's been marked for identification purposes as Government
4 Exhibit 1008.

5 Do you recognize this exhibit?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is another Google Chat conversation that happened
9 later in the evening after the one that we just looked at.

10 MR. HOWARD: The government offers Government Exhibit
11 1008.

12 MR. DRATEL: The same objections, your Honor.

13 THE COURT: All right. Those objections are
14 overruled. Government Exhibit 1008 is received.

15 (Government's Exhibit 1008 received in evidence)

16 THE COURT: And in just a few minutes, Mr. Howard, we
17 will break for lunch but we've got a few minutes.

18 MR. HOWARD: Thank you.

19 BY MR. HOWARD:

20 Q. Now, Mr. Bates, are your parts of the conversation and the
21 defendant's parts marked in the same way as all the other chats
22 we have looked at today?

23 A. Yes, they are.

24 Q. "Baronsyntax: I'm just now reading about the tor network

25 "Me: yea, site's down again

Flmgulb3

Bates - direct

1 "Me: what are you reading?

2 "Baronsyntax: just the wikipedia page. Apparently tor
3 does a lot of encryption/decryption. Could be an expensive
4 operation

5 "Me: im so stressed! I gotta get this site up tonight.
6 It's so weird because the site is accessable through tor2web,
7 but not by directly accessing the .onion url

8 "Baronsyntax: I'm not sure how that stuff works

9 "Me: i wish i did."

10 So, Mr. Bates, what's going on in this part of the
11 conversation?

12 A. I'm, you know, talking about the first time I read
13 documentation about Tor, and Ross is reiterating that, you
14 know, he's stressed because the Silk Road is still down in some
15 fashion and that he can't access the onion URL.

16 Q. And what is the onion URL?

17 A. Ah, in a dot-onion URL, you know, if you go to like
18 Google.com, that's -- in a normal Web browser, that's the
19 website address for Google. In Tor you would have to go to
20 something dot-onion in the Tor browser to get to the site.

21 Q. Now, could you please flip in your binder to what's been
22 marked for identification purposes as Government Exhibit 1002.
23 Do you recognize what this is?

24 A. Yes, I do.

25 Q. And what is it?

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Bates - direct

1 A. This is another Google Chat conversation between Ross and
2 me that happened a few days after the last one we looked at.

3 MR. HOWARD: The government offers Government Exhibit
4 1002.

5 MR. DRATEL: The same objections, your Honor.

6 THE COURT: Those objections are overruled.
7 Government Exhibit 1002 is received.

8 (Government's Exhibit 1002 received in evidence)

9 BY MR. HOWARD:

10 Q. Now, what is the date of this online chat, Mr. Bates?

11 A. This is March 17, 2011.

12 Q. A couple days after the voicemail and the previous chats we
13 have reviewed?

14 A. That's correct.

15 Q. And are the parts of the conversation labeled just like all
16 the other ones we reviewed?

17 A. That's also correct.

18 Q. "baronsyntax: You still hiring for your book business?

19 "Me: yea, the team is getting full, but there are
20 still some spots, have someone in mind?

21 "Baronsyntax: possibly, what kind of work is it?

22 "Me: weekend job, door-to-door, pays \$12/hr on average

23 "Baronsyntax: weekends only?

24 "Me: yep. Sat and sun

25 "Baronsyntax: yeah, he's probably going to want more

Flmgulb3

Bates - direct

1 hours than that. Thanks for humoring me though :-)

2 "Me: sure."

3 Let's take a pause.

4 What was going on in this part of the conversation,
5 Mr. Bates?

6 A. This was a while ago but I think we're -- yeah, we're
7 talking about a friend of mine who was looking for work and
8 possibly Ross hiring him at the book business that he ran.

9 Q. And at the time -- at this time, did you understand him to
10 be involved in the book business?

11 A. Yes.

12 Q. And what was the name of that business?

13 A. I believe it was Good Wagon Books.

14 Q. This was in addition to Silk Road?

15 A. At this time, yes, it was in addition to.

16 Q. Let's continue down the chat:

17 "me: my site had a 40 minute spot on a national radio
18 program

19 "me: friggin crazy, you gotta keep my secret buddy

20 "baronsyntax: I haven't told anyone and I don't intend
21 to

22 "me: i know i can trust you

23 "baronsyntax: I don't even know the onion url. I
24 might tell people about the site though - if that's ok?

25 "baronsyntax: I won't even mention I know someone who

Flmgulb3

Bates - direct

1 runs it

2 "me: mmm....ok, gotta have a good story for how you
3 found it in case they ask."

4 THE COURT: Now, Mr. Howard, it may make sense to --
5 do you want to have the witness answer a question on that piece
6 because we are going to have to break for lunch?

7 MR. HOWARD: I think it would make sense for us to
8 just recap that to start the next. It ties into the subsequent
9 portion. So maybe you should just break here.

10 THE COURT: All right. We'll break.

11 Ladies and gentlemen, we are going to break for lunch.
12 I want to remind you not to talk to each other or anybody else
13 about this case or anything having to do with this case.

14 And we'll pick up again at 2 o'clock. Thank you very
15 much.

16 THE CLERK: All rise as the jury leaves.

17 THE COURT: (To the witness) You can step out as well.
18 Thank you.

19 (Continued on next page)
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Flmgulb3

Bates - direct

1 (Jury and witness not present)

2 THE COURT: All right, ladies and gentlemen. Let's
3 all be seated.

4 I've got a couple of things. Let me just talk about
5 the last series of exhibits, which were Government Exhibits
6 1000, 1001, 1006, 1002. It is the series relating to the chats
7 between this witness, Mr. Bates, and Mr. Ulbricht. I've
8 overruled defense objections and I just want to state why. If
9 there were other government exhibits in that series, I mean to
10 include them in this.

11 In terms of the Vayner objection, this witness has
12 sufficiently authenticated these chats. And in terms of
13 hearsay, they're either -- they are of two types of content.
14 Either it is not for the truth, or to the extent there are
15 pieces for the truth, they are admissions by Mr. Ulbricht.
16 But, for instance, whether or not, in 1006, Bates went to the
17 bathroom is not for the truth, but there are portions which may
18 be for the truth in terms of some of the pieces that
19 Mr. Ulbricht stated.

20 That's what I wanted to raise. Mr. Dratel, you wanted
21 to make a record on some of the testimony that you wanted to
22 elicit from Mr. Kiernan?

23 MR. DRATEL: Yes, your Honor.

24 He conducted an exercise -- really, an experiment --
25 that was designed to allow, which he did in the beginning of

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Bates - direct

1 his testimony, which was predicate to all the Tor chats, which
2 was that by setting up Tor chat and then creating some chats,
3 that the person operating the computer would be "myself" on the
4 chats. The underlying program that's used for that -- and how
5 it's composed -- is essential to that experiment.

6 You can't have an experiment where you have different
7 elements on each side of the experiment and have it be valid.
8 And I was not allowed to get into that. It is directly
9 relevant to his direct. I can't immunize it just by not asking
10 it when it is an implicit and a central part of what he did.
11 You can't say, ah, I'm running an experiment, you know, on a
12 substance and then have a different substance. You can't have
13 a gas mileage experiment with cars and you use two different
14 types of gasoline. That's what I was getting at. And I
15 couldn't do it. And I am moving for a mistrial on that basis.

16 And I'm also moving for a mistrial because the Court
17 then said in front of the jury I can call a witness. It's not
18 my burden. I have no burden. You put the burden on me.

19 THE COURT: The motion for a mistrial is denied. I am
20 entirely comfortable with all of my limitations in terms of
21 what was within the scope of direct and what was outside of the
22 scope of the direct.

23 I believe that in the context of what was occurring,
24 my comment was entirely appropriate. However, I will instruct
25 the jury that the defendant does not have a burden.

Flmgulb3

Bates - direct

1 My point for you, Mr. Dratel, is to the extent the
2 defendant would like to put on evidence, which is entirely his
3 choice, ultimately, that he would like to present, he can do at
4 that, or not. It will be up to the government to put together
5 the facts which the jury will use to determine whether or not
6 the government has carried its burden of proof as to each of
7 the charged counts.

8 Mr. Howard, would you like to respond at all to -- or,
9 actually, it was Mr. Turner? Which one of you was it? It was
10 Mr. Howard.

11 MR. HOWARD: It was me, your Honor.

12 And I do believe the defendant was -- I'm sorry, the
13 defense counsel did ask some questions regarding about whether
14 the witness knew for sure about whether the burdens were
15 correct. So that testimony was elicited in some form.

16 THE COURT: That's my point about how when it was
17 within the scope, I allowed it. When it was outside of the
18 scope, I disallowed it.

19 All right. Is there anything further that people
20 would like to say on any topic before we break for lunch? I do
21 have a matter in here at 1. It is a criminal matter. So I'll
22 need a little bit of space at the first two spots.

23 Is there anything that anybody else would like?

24 MR. TURNER: Not from the government, your Honor.

25 THE COURT: Actually, I do have one more thing.

Flmgulb3

Bates - direct

1 Mr. Dratel, anything else?

2 MR. DRATEL: No, your Honor.

3 THE COURT: All right. One thing I wanted to raise.

4 I want to have a copy of the jury instructions hopefully either
5 later today or tomorrow morning. In the proposed verdict
6 form -- and we're going to have to go through the instructions,
7 obviously, at another time but I want you folks to have it.
8 For the continuing criminal enterprise, I want you folks to
9 take a look at 848, the statutory provision, and at the Alleyne
10 case and determine whether or not there are additional issues
11 which should be in your view either contained or not contained
12 on the verdict form.

13 MR. TURNER: I just didn't catch that, your Honor.

14 THE COURT: On the continuing criminal enterprise.

15 MR. TURNER: The name of the case.

16 THE COURT: Alleyne, A-l-l-e-y-n-e. It holds that if
17 there is going to be a statutory minimum imposed by virtue of a
18 statutory requirement, the jury must determine beyond a
19 reasonable doubt that that requirement has been met.

20 So to the extent that there are provisions of 848 that
21 require supervisory findings and/or other findings, I believe
22 those need to be called out, but they are not on the proposed
23 verdict form. So I am soliciting people's views.

24 MR. HOWARD: We will look into that, your Honor.

25 THE COURT: All right. Thank you.

Flmgulb3

Bates - direct

1 That is all I've got.

2 All right. I'll see you all at 2 o'clock.

3 THE CLERK: All rise.

4 (Luncheon recess)

5 (Continued on next page)

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Bates - direct

A F T E R N O O N S E S S I O N

2:05 p.m.

RICHARD BATES,

Resumed, and testified further as follows:

(Jury not present)

THE COURT: All right. Let's bring out the jury.

THE CLERK: All rise as the jury enters.

(Jury present)

THE COURT: All right. Ladies and gentlemen, let's
all be seated.

And before we get going, I wanted to go back over one
matter with you. As you heard me say at the beginning of the
case -- and I want to repeat now -- the defendant in a criminal
case does not bear the burden of proof. He is not required to
call any witnesses. The government bears the burden of proof
in a criminal case from the beginning and all the way through.

So whether or not the defendant -- he is not required
to call any witnesses, and any comments of mine that may have
suggested that he should or ought to, you should certainly
disregard. The defendant does not bear any burden of proof.

All right. Thank you.

Mr. Howard, you may proceed, sir.

MR. HOWARD: Thank you, your Honor.

BY MR. HOWARD:

Q. Good afternoon, Mr. Bates.

Flmdulb4

Bates - direct

1 A. Good afternoon.

2 MR. HOWARD: So, Mr. Evert, could we please publish
3 Government Exhibit 1002, which is where we left off before the
4 lunch break?

5 THE WITNESS: Before I had a folder with these
6 exhibits in them. I don't have that.

7 MR. HOWARD: May I approach the witness, your Honor?

8 THE COURT: You may.

9 MR. HOWARD: So, Mr. Evert, could you please zoom in
10 to the middle of the conversation, starting at "My site had."

11 "me: my site had a 40 minute spot on a national radio
12 program. Friggin crazy, you gotta keep my secret buddy

13 "baronsyntax: I haven't told anyone and I don't intend
14 to

15 "me: i know i can trust you

16 "baronsyntax: I don't even know the onion url. I
17 might tell people about the site though - if that's ok? I
18 won't even mention I know someone who runs it

19 "me: mmm....ok, go..a have a good story for how you
20 found it in case they ask

21 "baronsyntax: I'll just tell them I saw it on 4chan or
22 something."

23 "Me: coo."

24 So, Mr. Bates, what is going on in this part of the
25 conversation?

Flmdulb4

Bates - direct

1 A. In this part of the conversation Ross was excited that Silk
2 Road was getting some media coverage. And eventually I asked
3 him if it's OK if I just tell people that I know that the Silk
4 Road exists without, you know, associating him or myself with
5 it. And he approves of that as long as I have a good story.

6 Q. And continuing down the chat:

7 "baronsyntax: What was the national radio program?
8 Conservative talk radio?

9 "me: ill tell ya in person, i don't want to talk to
10 much over unsecured channels

11 "baronsyntax: gotcha. Need to switch to TorChat
12 soon."

13 So, Mr. Bates, what's occurring in this part of the
14 conversation?

15 MR. DRATEL: Your Honor, the conversation speaks for
16 itself.

17 THE COURT: I will allow it. You may give your view
18 as to what's happening in the conversation with the cross.

19 A. This conversation happened over Google Chat, which is, as I
20 said earlier, I believe not encrypted, and Tor chat was --
21 after I learned about Tor, I thought wouldn't it be neat if
22 there was a chat program that worked on that, and a simple
23 Google search led me to TorChat. And I suggested to Ross that
24 we use that to communicate securely and privately.

25 Q. Did you, in fact, later have communications with the

Flmdulb4

Bates - direct

1 defendant over TorChat?

2 A. Yes, I did.

3 Q. Can you please flip in your binder to what has been marked
4 for identification purposes as Government Exhibit 1003.

5 Do you recognize what this is?

6 A. 1003? Oh, yes. This is a Google Chat between Ross and me.

7 MR. HOWARD: The government offers Government Exhibit
8 1003.

9 MR. DRATEL: The same objection, your Honor.

10 THE COURT: The same as the ones just in the
11 immediately prior ones?

12 MR. DRATEL: Yes.

13 THE COURT: All right. Those objections are
14 overruled. GX1003 is received.

15 (Government's Exhibit 1003 received in evidence)

16 BY MR. HOWARD:

17 Q. So, Mr. Bates, what is the date of this online chat?

18 A. This is April 1, 2011.

19 MR. HOWARD: Mr. Evert, could we please zoom in on the
20 conversation, please. The top half. Thank you.

21 Q. "baronsyntax: All my friends think your site is really cool
22 :•])

23 "Me: :)

24 "Baronsyntax: I told them I know the guy who runs it

25 "Me: you should be quitter

Flmdulb4

Bates - direct

1 "Me: quieter

2 "Me: sp?

3 "Me: i think you mentioned something to jon too, huh?

4 "Baronsyntax: I didn't tell anybody about it - this is
5 just the only idea I had for an April Fool's joke

6 "Me: aww geez

7 "Baronsyntax: All I told Jon was that it was cool

8 "Me: even so, shhhh."

9 So, Mr. Bates, what is occurring in this conversation?

10 A. This is an April Fool's joke that I laid on Ross, which in
11 retrospect is not very funny.

12 Q. And what was the joke?

13 A. The joke was that I told everybody that -- about the Silk
14 Road and told everyone that I know the guy who runs the Silk
15 Road, when in fact I had not told anybody about Ross'
16 involvement.

17 Q. So did you -- you continued to provide programming help to
18 Mr. Ulbricht after you learned he was running Silk Road,
19 correct?

20 A. That is correct.

21 Q. And why did you do that?

22 A. Because he was my friend.

23 Q. What sorts of things, generally, do you remember him asking
24 for help on?

25 A. I remember him asking me some php questions. I remember

Flmdulb4

Bates - direct

1 him asking me about object-oriented programming, a little bit
2 of Web design. I remember us talking about encryption a little
3 bit. That's all that's coming to mind right now.

4 Q. Are you familiar with what a computer server is, Mr. Bates?

5 A. Yes, I am.

6 Q. Did you ever have administrative access to Silk Road's
7 servers?

8 A. No, I did not.

9 Q. Was it ever offered to you?

10 A. Yes. There was one time, granted, Ross and I had both been
11 very heavily drinking, and I was at the bar and Ross came up to
12 me and said something akin to, Hey, do you want to be an admin.
13 I understood he was talking about Silk Road. I turned back to
14 him and I said, I've already got a job.

15 Q. Did the defendant talk to you about -- tell you why he was
16 asking you?

17 A. Yes. Earlier he had kind of complained -- he vented a
18 little bit to me about some of the administrative duties that
19 he had. He had to resolve conflicts between buyer and seller
20 in case something went wrong with the transactions. He also
21 had to monitor the site. It had certain rules about things
22 that could or could not be posted and he had to enforce that,
23 and he told me the workload was becoming too much and he would
24 have to hire some admins.

25 Q. And when did this conversation occur, approximately?

Flmdulb4

Bates - direct

1 A. I believe this was in March of 2011 at some point.

2 Q. What, if anything, did the defendant provide you in
3 exchange for your help on Silk Road?

4 A. Nothing but his friendship.

5 Q. How long did you continue to provide assistance with
6 programming help on Silk Road?

7 A. I continued to provide help going into the summer of 2011.

8 Q. And what happened?

9 A. I grew increasingly uncomfortable. Primarily, I recall
10 there was a news article about Chuck Schumer, you know, telling
11 the FBI to investigate. I recall that being sometime in June
12 of 2011. I remember after that came out, I went over to Ross'
13 apartment and I told him, "You know, they're looking for you,
14 right?" And he just said, "Yeah."

15 Going after that, I at some point, maybe a few weeks,
16 possibly a month later, I remember having a conversation with
17 him where I said, "You know, hey, have you ever thought about
18 doing something legitimate, something legal?" And that's when
19 he first mentioned the idea of creating a bitcoin exchange to
20 me. And then a little later we actually started working on
21 that project.

22 Q. And was the bitcoin exchange a legitimate project?

23 A. It started off that way. We had discussions later about
24 possibly using it to launder money.

25 Q. Now, while you were working on this bitcoin exchange, were

Flmdulb4

Bates - direct

1 you aware of whether or not the defendant was still working on
2 Silk Road?

3 A. Yes. To my knowledge he was still working on Silk Road.

4 Q. And how do you know that?

5 A. We had conversations about it. I assume that if he was to
6 stop --

7 MR. DRATEL: Objection.

8 A. -- he would have mentioned it.

9 THE COURT: Sustained. Don't assume.

10 THE WITNESS: OK.

11 BY MR. HOWARD:

12 Q. Can you flip in your binder at what has been marked for
13 identification purposes as Government Exhibit 228, please.

14 THE COURT: Can you give a timeframe of when the
15 bitcoin exchange work was occurring, Mr. Howard.

16 Q. So when, approximately, did you start working on the
17 bitcoin exchange project with Mr. Ulbricht?

18 A. It really ramped up around the September and October
19 timeframe.

20 Q. How long did you work on it with Mr. Ulbricht?

21 A. A. It wasn't long after that, around late October or
22 November, you know, we started having disagreements and I
23 became not as interested in the project. To be specific, we
24 had discussions about who else could be hired. I wanted to vet
25 other programmers. And there were some discussion about me

Flmdulb4

Bates - direct

1 also having a job at the same time, which, you know, would make
2 me not able to contribute as much to that project.

3 Q. And so what happened after you had those discussions about
4 you having a job at the time?

5 A. After that, you know, he was also going to Australia. He
6 sent me a contract. I never replied to that message and I
7 never signed it.

8 Q. So approximately when did you start working on that bitcoin
9 exchange project?

10 A. November of 2011.

11 Q. And during the time that you were involved in that project,
12 was it ever operational?

13 A. No.

14 Q. Can you please flip in your binder to what has been marked
15 for identification purposes as Government Exhibit 228.

16 Do you recognize what this is?

17 A. Yes, I do.

18 Q. What is this?

19 A. This is a TorChat conversation between Ross and me.

20 MR. HOWARD: Mr. Evert, could you please publish
21 Government Exhibit 228, which is already in evidence.

22 Q. Now, Mr. Bates, how are your parts of this conversation
23 labeled?

24 A. They are labeled as "r."

25 Q. And what are Mr. Ulbricht's parts of the conversation

Flmdulb4

Bates - direct

1 labeled as?

2 A. They are labeled as "myself."

3 Q. Starting on October 6, 2011:

4 "r: Hey man, I've got an idea how we both can make a
5 little bit of money

6 "myself: i like money

7 "r: You don't have a job besides the site right now,
8 do you?

9 "myself: nope

10 "r: ok, hear me out. If it's not your bag, that's fine

11 "myself: right on

12 "r: I've got lots of stuff I've been meaning to ebay,
13 but I don't have the time. How about I give it to you, you
14 sell it and take care of packaging and I give you 20% and you
15 can pay me my share in BTC

16 "myself: haha, I need someone to do that for me too!

17 "r: haha

18 "myself: I still haven't sold my two cars

19 "r: well, that's a little harder to do on ebay

20 "myself: yea, that's a craigslist project

21 "r: I've got like an old radar detector and an old
22 GPS, a police scanner I haven't programmed since I moved and I
23 don't use anymore, that kinda of stuff

24 "r: well, if you decide that's something you wanna do,
25 let me know. Otherwise I'll probably just find one of those

Flmdulb4

Bates - direct

1 local services

2 "myself: i have a friend who just lost a job that
3 might want to do it

4 "r: ok, as long as he's trustworthy

5 "myself: I'll have him contact you."

6 So, Mr. Bates, what was occurring during this
7 conversation?

8 A. During this --

9 MR. DRATEL: Objection. The conversation speaks for
10 itself.

11 THE COURT: Overruled.

12 THE WITNESS: Sorry. What was the question again.

13 Q. What was occurring during this conversation?

14 A. I was suggesting to him that I had some things that I was
15 selling, and if he wanted to, I could give them to him and he
16 could sell them on eBay and package them and deal with taking
17 pictures and all of that and I would give him a cut.

18 MR. HOWARD: So, Mr. Evert, could you please zoom in
19 on the top two lines of the conversation we just read. No, on
20 the first page, please.

21 (Pause)

22 Q. So, here, on October 6, 2011, you say: "You don't have a
23 job besides the site right now, do you?"

24 And "myself" responds: "Nope."

25 What were you referring to when you asked him if he

Flmdulb4

Bates - direct

1 had a job besides the site?

2 A. I was referring to the Silk Road website.

3 Q. Now, how did you understand the defendant to be making
4 money at the time?

5 MR. DRATEL: Objection.

6 THE COURT: Overruled.

7 A. Umm, at the time I knew he had some money and I did know
8 that he was receiving some money from Silk Road and from the
9 bitcoin.

10 Q. And how do you know that he was receiving money from Silk
11 Road?

12 A. At some point we discussed it. I don't remember exactly
13 when.

14 Q. And did he ever explain to you how he got money from Silk
15 Road?

16 A. As I recall, it was a percentage of the transactions. So
17 when someone had a transaction, he would get a percentage.

18 MR. HOWARD: Mr. Evert, let's go to the next part of
19 the excerpts.

20 October 11, 2011:

21 "myself: you want to get together tonight or tomorrow?

22 "r: either would work for me. On an unrelated note,
23 Aspen's new BF is quite the drug dealer

24 "myself: ok, let me make sure I'm free tonight...

25 "r: apparently they have LOTS of MDMA

Flmdulb4

Bates - direct

1 "myself: rly!!!

2 "r: yeah, but they are charging more than SR is

3 "myself: ha! Ok, I'm free tonight... wanna see my new
4 place?

5 "r: You're not living at that girl's place anymore?

6 "myself: same place, have you been here?

7 "r: dude . . .

8 "myself: when were you here?!?!

9 "r: I helped you move in

10 "myself: forehead smack. Right right, well, anyway. my
11 place or yours?

12 "r: either one. I've got to swing by office depot or
13 something for a whiteboard

14 "myself: ok, I don't really feel like driving, so is
15 my place ok? I can cook us some dinner while I wait for you

16 "r: sure

17 "myself: cool, what's your eta?

18 "r: text me your address again and I'll glympse you
19 when I leave at least an hour

20 "myself: ok, glimps me when you are leaving the store
21 and I'll start cooking then --

22 "1200 Treadwell St, apt. 119, 78704.

23 "r: going offline now

24 "myself: cya."

25 Mr. Bates, what was happening during this

Flmdulb4

Bates - direct

1 conversation?

2 A. I guess let's look at the beginning part.

3 So starting --

4 MR. HOWARD: Mr. Evert, would you turn to the second
5 page, please, and zoom in here.

6 A. So starting here, a mutual acquaintance of Ross and I,
7 named Aspen, had a new boyfriend who was selling MDMA. I
8 mentioned it to Ross because I knew that he was interested in
9 MDMA. And I also thought he would find it interesting that
10 they were charging more than Silk Road was because he was
11 running --

12 MR. DRATEL: Objection.

13 THE COURT: Overruled.

14 A. Because he was running the Silk Road at this time.

15 Moving on into the conversation, we start talking
16 about me coming over. I was going to get a white board so that
17 we could diagram some things about the bitcoin exchange. And I
18 think that's everything in the conversation.

19 Q. And, Mr. Bates, at the end of the conversation there was an
20 address, 1200 Treadwell Street, Apartment 119. Are you
21 familiar with that address?

22 A. Yes. It's where Ross was living at the time in south
23 Austin.

24 Q. Now, Mr. Bates, I want to direct your attention to
25 November 11, 2011.

Flmdulb4

Bates - direct

1 Did you see the defendant that day?

2 A. Yes, I did.

3 Q. And can you explain what happened?

4 A. I was having a party, a 11/11/11 party to celebrate the
5 date as just an excuse to have a party, really. Ross showed up
6 early to the party and he wanted to speak with me. He started
7 by asking me, you know, have you told anybody about, you know,
8 my involvement in the Silk Road. And I had tried to tell one
9 person but I don't think I communicated across. We were at a
10 bar and I was very drunk.

11 And then he explained to me very panicked that someone
12 who knew about his involvement had posted to his Facebook wall
13 something along the lines of I'm sure the authorities would be
14 very interested in your drug-running site. And he told me that
15 he, you know, deleted that post, unfriended the person. And at
16 that point I told him you've got to shut the site down. This
17 is all they need. Once they see this, they can get a warrant
18 and it's over. This is not worth going to prison over.

19 And he told me that he couldn't shut down the site
20 because he had already sold it to someone else.

21 Q. How did the defendant appear to you as he told you this
22 story?

23 A. He was nervous.

24 Q. And did the defendant tell you about who else he had told
25 about the Silk Road website?

Flmdulb4

Bates - direct

1 A. To my knowledge, Ross had told two people -- his
2 ex-girlfriend Julia and me.

3 Q. When the defendant told you that he sold the site, did you
4 believe him?

5 A. Yes, I did.

6 Q. Now, following that party at your house on November 11,
7 2011, did you have any further discussions about Silk Road with
8 the defendant?

9 A. Yes, I did.

10 Q. Where was the defendant -- let's take a step back.

11 At the time of the 11/11/11 party, where was the
12 defendant living at that time?

13 A. He was still living in Austin, Texas.

14 Q. And at some point did he move away from Austin?

15 A. Yes. I think it was somewhere around the Thanksgiving
16 timeframe he went to Australia.

17 Q. And so later did you have any discussions about Silk Road
18 with the defendant?

19 A. Yeah. A few times over Google Chat, I would send him links
20 about Silk Road usually when there was some sort of problem
21 like some sort of security issue or someone getting arrested,
22 and I was really kind of trying to insinuate, hey, aren't you
23 glad, you know, that you don't have to deal with this anymore.

24 Q. Can you please flip in your binder to what has been marked
25 for identification purposes as Government Exhibit 1004.

Flmdulb4

Bates - direct

1 (Pause)

2 Do you recognize what this is?

3 A. Yes, I do. This is another Google Chat conversation
4 between Ross and me.

5 MR. HOWARD: The government offers Government Exhibit
6 1004.

7 MR. DRATEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 1004 received in evidence)

10 MR. HOWARD: Mr. Evert, could you please publish
11 Government Exhibit 1004.

12 Q. What is the date of this conversation?

13 A. This is February 5, 2013.

14 MR. HOWARD: Mr. Evert, could you zoom in to this
15 section here.

16 Q. And in this chat how are your parts of the conversation
17 labeled?

18 A. They were labeled as baronsyntax@gmail.com.

19 Q. How about the defendant's parts?

20 A. They are labeled as "me."

21 Q. "baronsyntax@gmail.com: Did you see slashdot last week?

22 "Me: negative

23 "Baronsyntax@gmail.com: There was something posted on
24 Friday that you might have found interesting

25 "Me: I'll take a look, thanks. Glad that's not my

Flmdulb4

Bates - direct

1 problem anymore :)

2 "Baronsyntax@gmail.com: yes

3 "Me: I have regrets, don't get me wrong... But that
4 shit was stressful. Still our secret though, eh?

5 "Baronsyntax@gmail.com: yup. I'm spilling the beans
6 when I turn 65 though.

7 "Me: lol. OK."

8 So, Mr. Bates, what was he referring to in this part
9 of the conversation?

10 A. At some point Ross had asked me not to send him links about
11 the Silk Road anymore, and so I got kind of creative and I
12 said, you know, did you see slashdot last week. I don't
13 remember exactly what the article was about but I know it was
14 related to Silk Road.

15 Here he kind of acknowledges that, you know, he's not
16 working on it at that time. And I tell him, you know, it's
17 still a secret but when I turn 65, long after the statute of
18 limitations is up, I may tell someone.

19 MR. HOWARD: Your Honor, may I just talk with
20 co-counsel for one minute? Maybe not.

21 THE COURT: Yes.

22 MR. HOWARD: No further questions, your Honor.

23 THE COURT: All right. Thank you.

24 Mr. Dratel.

25 CROSS-EXAMINATION

Flmdulb4

Bates - cross

1 BY MR. DRATEL:

2 Q. Good afternoon, Mr. Bates.

3 A. Good afternoon.

4 Q. And the first time you met with the government was
5 October 3, 2013, correct, about this case?

6 A. I believe it was that date or around that time.

7 Q. And that was very soon after Mr. Ulbricht had been
8 arrested, right?

9 A. That is correct.

10 Q. And as you said before, you lied to the government, right?

11 A. That is correct.

12 Q. And you lied because you wanted to stay out of trouble?

13 A. That's correct.

14 Q. And they asked you about Mr. Ulbricht and Silk Road, right?

15 A. Yes, they did.

16 Q. And they asked you whether you were an administrator on the
17 site?

18 A. That's correct.

19 Q. And you denied that, right?

20 A. Yes, I did.

21 Q. And you said you had no idea that Mr. Ulbricht was
22 operating Silk Road, right?

23 A. That is correct.

24 Q. And that you had no idea what Mr. Ulbricht was doing with
25 the website, correct?

Flmdulb4

Bates - cross

1 A. That's also what I said.

2 Q. And you also said that you didn't know anything about
3 Mr. Ulbricht and a bitcoin exchange, a bitcoin site, right?

4 A. I recall differently. I recall that as they were leaving,
5 I told them that I worked with him on a bitcoin exchange and it
6 never came to fruition.

7 Q. I show you what's been marked as 3513 -- sorry, 3513 --
8 three-five-one-three dash 55. I ask you to look at the end of
9 the second paragraph.

10 A. OK.

11 Q. Read it to yourself, please.

12 A. The second-to-last paragraph?

13 Q. The second paragraph, the end of the second paragraph.
14 Just read it to yourself.

15 (Pause)

16 A. OK.

17 Q. And did you not tell the government, or did you not deny
18 that you knew anything about Mr. Ulbricht and a bitcoin
19 business?

20 A. I'm sorry, I'm a little confused. Does it say that I
21 denied it somewhere in here? I'm not seeing it.

22 MR. HOWARD: Objection.

23 THE COURT: Sustained.

24 MR. DRATEL: Let me just point to the part of the
25 document that I'll need --

Flmdulb4

Bates - cross

1 MR. HOWARD: Objection. As a matter of fact, may we
2 request a sidebar?

3 To be clear, there has been no foundation that -- I
4 think it is probably better for us all to have a sidebar.

5 THE COURT: All right.

6 (Continued on next page)

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Flmdulb4

Bates - cross

1 (At the sidebar)

2 MR. HOWARD: Your Honor, I believe the witness
3 testified that he had a different recollection. There was no
4 foundation that he couldn't remember. He improperly is trying
5 to refresh his recollection when the witness himself denied
6 that he had a memory.

7 MR. DRATEL: I'm not refreshing his recollection. I'm
8 impeaching him. This is a prior consistent statement, if he
9 adopts it. If he doesn't, he doesn't. This is what the 3500
10 material is.

11 THE COURT: I will allow it. Let me see.

12 MR. TURNER: It is those --

13 THE COURT: It is just 302?

14 MR. HOWARD: Yes.

15 THE COURT: Let me just think about this.

16 MR. DRATEL: Every judge in this courthouse --

17 THE COURT: I never worry about that. Never.

18 (Pause)

19 I'm going to allow it on the basis that it's not a
20 prior inconsistent statement because we have no idea if he even
21 made the statement that is in that document. Hold on. But he
22 can show him that, for whatever it is worth, that somebody
23 wrote it down and does that refresh his recollection that in
24 fact he didn't tell him that.

25 MR. DRATEL: Your Honor, it is not a refreshed

Flmdulb4

Bates - cross

1 recollection. This is what it is.

2 THE COURT: This is not a prior inconsistent
3 statement?

4 MR. DRATEL: It is, because 3500 is prior statements
5 of the witness. I don't get this unless it is deemed by
6 government to be a prior statement of the witness. It doesn't
7 have to be signed.

8 THE COURT: You get it for a variety of reasons.

9 MR. DRATEL: Not 3500 material.

10 THE COURT: You can't put this into evidence, right?

11 MR. DRATEL: I'm not putting it into evidence.

12 THE COURT: I'm saying if it is a prior inconsistent
13 statement, then you can put it into evidence.

14 MR. DRATEL: I can ask him if he --

15 THE COURT: You know it is not a prior --

16 MR. DRATEL: I can --

17 THE COURT: Hold on. I get to finish my sentence and
18 so you do you. OK?

19 MR. DRATEL: OK.

20 THE COURT: Then I will let you finish your sentence.

21 MR. DRATEL: OK. Thank you.

22 THE COURT: A prior inconsistent statement has a
23 particular meaning under the hearsay rules. And it's a prior
24 inconsistent statement of the witness. Something that is
25 written down on a 302 doesn't have the kind of evidentiary

Flmdulb4

Bates - cross

1 value of a prior inconsistent statement. Typically, I think it
2 is has to be, under the rules, under oath and a prior
3 inconsistent statement under oath.

4 MR. DRATEL: No, it doesn't.

5 THE COURT: I will take a look. Hold on.

6 (Continued on next page)
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Flmdulb4

Bates - cross

1 THE COURT: Let's take mid-afternoon break. All
2 right? I hate to have you guys waiting because then I know it
3 is just like wasting your time. We'll work this out and then
4 you come back out and then we'll go smoothly. All right?

5 And I want to remind you not to talk to each other
6 about this case.

7 (Continued on next page)

Flmgulb5

Bates - cross

1 (In open court; jury not present)

2 THE COURT: Let's all be seated.

3 Mr. Dratel, 801(d)(1) does require an inconsistent
4 statement to have been given under oath under the penalty of
5 perjury.

6 MR. DRATEL: That's not the --

7 THE COURT: Give me your rule.

8 MR. DRATEL: 613.

9 THE COURT: Now the word "statement" here, Mr. Howard.

10 MR. HOWARD: Yes, your Honor. It's not the
11 defendant's statement. This is hearsay. It's someone else's
12 statement about what he said.

13 THE COURT: Correct.

14 MR. HOWARD: So it can't be admitted as extrinsic
15 evidence of an inconsistent statement.

16 THE COURT: Correct. You can use a 302 for
17 impeachment purposes for the purposes of refreshing his
18 recollection, as I was explaining to you, where you can say to
19 him I'm showing this to you now, does this refresh your
20 recollection that in fact you did tell someone. And he can
21 either say no, it doesn't refresh my recollection or he can say
22 yes, but you can't get it in as his statement.

23 MR. DRATEL: I'm not getting in it, but he can adopt
24 it just like --

25 THE COURT: If his recollection is refreshed, it's

Flmgulb5

Bates - cross

1 neither here nor there.

2 MR. DRATEL: No. But just like I did with Mr. Kiernan
3 where I showed him a memorandum of an interview, he did not
4 write the memorandum of this interview. Every single case, you
5 get a 302 by an agent of a witness' statements or proffer of a
6 proffer interview. You use it to impeach them by saying did
7 you not tell the government X on X date. And if he says -- if
8 he looks at the thing and says, yeah, I did, because you
9 confront him with it -- and if he says no, then you're stuck
10 with it.

11 THE COURT: Exactly.

12 MR. DRATEL: He hasn't answered that question as to
13 whether he told the government.

14 THE COURT: I think it's not, though, an inconsistent
15 statement. You were saying before that you can get it in as an
16 inconsistent statement.

17 MR. DRATEL: It is inconsistent.

18 THE COURT: You are doing exactly what I had suggested
19 over here that you can do. You can do it in the following way,
20 which is the witness says I told them X. You say, didn't you
21 really tell them Y. He says I told them X. Then you say let
22 me show this to you; does this refresh your recollection that
23 you told them Y. And he'll say it doesn't refresh my
24 recollection because I have no idea who wrote this. Or he'll
25 say actually, maybe it has spurred on a memory, yes. That's

Flmgulb5

Bates - cross

1 the way you use 302s.

2 MR. DRATEL: No, actually I think Mr. Howard is right.
3 There was no failure of recollection. And it's not a
4 refresh -- I can use anything to refresh recollection. I don't
5 need 302. I can use anything. That's not the issue. The
6 issue is it's a prior statement by the witness provided in
7 3500. The government certainly adopted it. They're not giving
8 it out of some largess. And while there are different
9 practices in different places, here, 302s are considered 3500
10 material. And this is not technically a 302, but it's a report
11 by a government agent acting within the scope of his authority.

12 The point is, if there's an inconsistent statement
13 there, I can confront the witness with it saying did you not
14 tell the government on such and such a date the following.

15 And if he says yes, I did, just like Mr. Kiernan said
16 yes, I did -- or he can say no, and then I'm stuck with it.
17 And even if he says yes, I can't put in the statement; I just
18 have the impeachment.

19 THE COURT: Mr. Howard.

20 MR. HOWARD: Your Honor, if he proceeds that way,
21 that's fine, in that manner.

22 THE COURT: But it's not coming in for the truth.

23 MR. DRATEL: It's impeachment. It's purely
24 impeachment.

25 THE COURT: Purely impeachment.

Flmgulb5

Bates - cross

1 MR. DRATEL: Does your Honor still have the page?

2 THE COURT: I didn't take the page.

3 I think the jury is taking a break. Let's take, like,
4 as little time as we can take, get ourselves back here and see
5 if we can gather up the jury and then come on back up.

6 THE DEPUTY CLERK: All rise.

7 (Recess)

8 (Continued on next page)

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Flmgulb5

Bates - cross

1 (In open court; jury present)

2 THE COURT: Mr. Dratel, you may proceed, sir.

3 MR. DRATEL: Thank you, your Honor. May I approach,
4 your Honor.

5 THE COURT: Yes.

6 BY MR. DRATEL:

7 Q. Can you just read the underlying statement to yourself and
8 then I'll ask you a question after you've done that, the
9 underlying sentence.

10 A. It says here "Bates -- "

11 Q. No. Don't read it out loud.

12 A. Just read it to myself. Okay.

13 Q. Just read it to yourself. And now if you have, I'll be
14 able to ask you a question, okay?

15 A. Okay.

16 Q. Did you not tell the government October 3, 2013, or a date
17 right around there, that first interview, did you not tell the
18 government that you had no idea that Ross Ulbricht was involved
19 in any bitcoin business?

20 A. I believe it's possible I may have contradicted myself at
21 that time. I remember very specifically as they were leaving I
22 told them, you know, we worked on a bitcoin exchange together
23 but it never came to fruition.

24 Q. Okay. Thank you. So, November 21, 2014 is the date of
25 your agreement with the government, right -- withdrawn -- your

Flmgulb5

Bates - cross

1 proffer with the government, correct?

2 A. That is correct.

3 Q. You had an interview. And that's also the date of your
4 agreement, right.

5 Q. If you need to, I can refresh your recollection.

6 A. Please do.

7 Q. I'm sorry. The date of the agreement is December 12. Does
8 that sound right?

9 A. That sounds correct; yes.

10 Q. But your interview was November 21, right?

11 A. That sounds right.

12 Q. Of 2014?

13 A. Yes.

14 Q. When you met with the government on November 21, you didn't
15 have any kind of agreement with the government as to what was
16 going to happen to you, right?

17 A. That is correct.

18 Q. And you knew that if you were charged and convicted of
19 being involved, of participating in the Silk Road and the sale
20 of drugs that you could face a life sentence, right?

21 A. I don't know if I imagined it being so harsh, but I knew
22 that I could go to prison.

23 Q. For a long time, right?

24 A. For a long time.

25 MR. HOWARD: Objection.

Flmgulb5

Bates - cross

1 THE COURT: Overruled.

2 Q. You said for a long time right, yes; you agreed?

3 A. Yeah.

4 Q. And part of that November 21 meeting with the government
5 was about telling the government about your involvement so you
6 would hope that you could avoid getting charged, getting
7 convicted, going to prison, right?

8 A. That was not a specific goal, but my lawyers told me we
9 have to tell them the truth, come clean, and then maybe we can
10 come to some kind of agreement, not necessarily a
11 nonprosecution agreement.

12 Q. Ultimately you got a nonprosecution agreement, correct,
13 right?

14 A. That is correct.

15 Q. You're not going to be prosecuted at all?

16 A. No.

17 Q. And what you have to do is testify here, correct?

18 A. I have to tell the truth here today.

19 Q. You have to testify here today, right? You couldn't refuse
20 to testify?

21 A. No, I could not.

22 Q. And all of your assistance would be provided pursuant to
23 specific instructions and control of the United States
24 Attorney's Office, right?

25 A. I'm sorry. Could you repeat the question one more time.

Flmgulb5

Bates - cross

1 Q. Sure. Any assistance that you would provide to federal
2 criminal investigators would be pursuant to the specific
3 instructions and control of the U.S. Attorney's office and
4 designated investigators?

5 MR. HOWARD: Objection to form, your Honor.

6 THE COURT: I think he's asking him whether that's his
7 understanding.

8 Overruled.

9 Q. Is that your understanding?

10 A. I'm sorry. Is this in my agreement?

11 Q. If you can't recall, I'd be happy to refresh your
12 recollection.

13 A. Yeah. I would like to see it.

14 Q. Okay. I'm showing you what's marked as 3513-65 and I'd ask
15 you to read to yourself the last sentence on the page.

16 A. Okay.

17 Q. Does your agreement provide that any assistance that you
18 provide to the government, to investigators would be provided
19 pursuant to specific instructions and control of the U.S.
20 Attorney's Office and designated investigators?

21 MR. HOWARD: Objection to form.

22 THE COURT: You can rephrase it: Do you recall that?

23 Q. Does that refresh your recollection that your agreement
24 provides that any assistance that you provide to the
25 investigation is pursuant to specific instructions and control

Flmgulb5

Bates - cross

1 of the United States Attorney's Office and designated
2 investigators?

3 MR. HOWARD: The government has the same objection.

4 THE COURT: Overruled.

5 A. So that -- my understanding of the instructions is, you
6 know, them telling me things like I need to be at, you know,
7 we're going to meet at this time, that kind of thing.

8 Q. I'm asking about your agreement. Does that refresh your
9 recollection --

10 A. I'm talking about the agreement.

11 MR. HOWARD: Objection.

12 THE COURT: Hold on. We have to get a question and an
13 answer and a clean question.

14 So what's the question, Mr. Dratel?

15 BY MR. DRATEL:

16 Q. Does 3513-65 refresh your recollection that your written
17 agreement with the government requires that any assistance that
18 you provide be pursuant to specific instructions and control of
19 the United States Attorney's Office and designated
20 investigators?

21 THE COURT: You can answer that.

22 A. Yes; that is what it says verbatim.

23 Q. Now, your agreement also provides that the government
24 determines whether or not you have given false, incomplete or
25 misleading testimony or information or otherwise violated your

Flmgulb5

Bates - cross

1 agreement, right?

2 A. Perhaps you could point that out and refresh my memory
3 again if it's highlighted.

4 Q. Sure.

5 A. Is it that one?

6 Q. Yes. It's the first sentence there. Some of it is not
7 highlighted but you can read the whole sentence silently.

8 A. Okay. Can you please repeat the question.

9 Q. Sure. That it's the government that determines whether or
10 not you've given false, incomplete or misleading testimony or
11 information or otherwise violated the agreement, right? That's
12 if the government determines?

13 A. Yes. It says "If the government has determined..."

14 Q. Right. So there's no arbitrator involved, right, it's the
15 government that gets to make that decision. You understand
16 that, right?

17 A. I suppose, yeah.

18 Q. And so if the government determines that you have not
19 honored your agreement, that if you've given false or
20 misleading testimony or otherwise violated the agreement, they
21 can rip it up, right?

22 A. Yes. It would mean that I could be prosecuted.

23 Q. Correct. You'd be prosecuted for all the things that
24 you're essentially getting a pass for, right, the things that
25 you mentioned on direct, right, your assistance with respect --

Flmgulb5

Bates - cross

1 A. Yes.

2 Q. -- your assistance with respect to Silk Road, right?

3 A. Yes.

4 Q. Your assistance with respect to the bitcoin operation to
5 the extent it was involved in money laundering, right?

6 A. I said that we discussed the possibility of using it for
7 money laundering.

8 Q. But that's part of your agreement, right?

9 A. It is in the agreement; yes.

10 Q. And also your personal use of drugs during the period
11 of -- of a couple of years, right?

12 A. That is correct.

13 Q. And the agreement provides that if the government
14 determines that you have violated the agreement, that
15 everything you said to the government, not only in the context
16 of here, but also all that you've said in your meetings with
17 the government, all that's admissible against you if the
18 government chooses to prosecute you, right?

19 A. That sounds correct.

20 Q. And that anything that may be outside the statute of
21 limitations by the time you're prosecuted, as long as it was
22 within the statute when you signed the agreement, you could be
23 prosecuted for, right?

24 A. Yes. That sounds correct also.

25 Q. So your choice is testify here for the government, you

Flmgulb5

Bates - cross

1 reached that agreement with the government, or face those
2 charges and a very serious prison sentence, right?

3 A. That sounds correct.

4 Q. You chose to be there on the witness stand instead of there
5 as a defendant, right?

6 MR. HOWARD: Objection.

7 THE COURT: Why don't you rephrase.

8 Q. You chose to make your agreement with the government and
9 testify rather than be charged?

10 A. That is correct.

11 Q. And you know -- and you knew when you signed the agreement
12 and you know here today that it's whether the government is
13 satisfied with your testimony as to whether that agreement
14 holds; it's not whether Mr. Ulbricht is satisfied or the judge
15 or anyone else, right? It's whether the government is
16 satisfied, right?

17 A. So I recall during the proffer agreement I asked my
18 attorney, I said to him what if I tell the truth and they don't
19 believe it, and he told me -- may I continue.

20 Q. I don't know. It's a privileged conversation.

21 THE COURT: It is a privileged conversation.

22 THE WITNESS: I apologize.

23 THE COURT: Let me explain to you that you have a
24 privilege between yourself and your attorney insofar as you've
25 had any communications that were private between yourself and

Flmgulb5

Bates - cross

1 your attorney.

2 THE WITNESS: Okay.

3 THE COURT: You can choose to waive that privilege,
4 but there are lots of implications about that you would want to
5 likely confer with an attorney about, all right?

6 THE WITNESS: Okay.

7 THE COURT: So if it's a private conversation between
8 you and your attorney, that's where the privilege attaches.

9 Mr. Dratel, why don't you pose a question.

10 MR. DRATEL: Rather than get into a privileged
11 conversation, I'll move on

12 THE COURT: All right.

13 Q. You talked about commissions this morning, one question and
14 answer - or maybe this afternoon - during your direct, correct?

15 A. Yes, I did.

16 Q. And that subject with the prosecutors just came up very
17 recently, right?

18 A. I don't know. Can you please explain the question.

19 Q. Sure. The idea of commissions at Silk Road, that just came
20 up recently in your discussions with the prosecution, not back
21 in November of 2014 but much more recently, right?

22 A. I don't recall. I do remember us talking about it
23 recently. I don't remember if we talked about it before then.
24 It's possible.

25 Q. But you remember talking about it recently, right, very

Flmgulb5

Bates - cross

1 recently?

2 A. Yes, I do.

3 Q. Within the last week, right?

4 A. Yes.

5 Q. In fact, you never discussed commissions with them before,
6 right?

7 A. I'm not sure.

8 Q. Now, in terms of bitcoin, you invested in bitcoin at one
9 time, correct?

10 A. That is correct.

11 Q. When it was ten dollars a bitcoin, right?

12 A. That sounds about right.

13 Q. And you put \$100 in?

14 A. Something like that.

15 Q. And you cashed out when it was \$160 per bitcoin?

16 A. Again, that sounds about right.

17 Q. If you want, I can refresh your recollection.

18 A. Please do.

19 Q. It's one you may have up there still.

20 A. No, I just have the proffer -- yes, okay, this is the one.

21 A. Yes, this was the -- I've read it here.

22 Q. Okay. By the way, you read that, does that refresh --
23 never mind. Withdrawn.

24 Okay. So you invested at ten, cashed out at 160,
25 right?

Flmgulb5

Bates - cross

1 A. That sounds correct.

2 Q. And that's sometime around 2013 you think?

3 A. Yes.

4 Q. In fact, it helped to finance your trip to San Francisco in
5 April 2013?

6 A. That is also correct.

7 Q. And you relied on Mr. Ulbricht with respect to information
8 about bitcoin to some extent at least in the beginning, right?

9 A. I heard about bitcoin from him initially.

10 Q. And the idea for a bitcoin exchange was really
11 Mr. Ulbricht's idea?

12 A. Yes, it was.

13 Q. And it was an exchange site that would allow buyers and
14 sellers to exchange -- rather, to monitor all bitcoin exchanges
15 simultaneously?

16 A. I don't -- not monitor, but it would work on top of other
17 exchanges was part of the idea. So that if you had an order,
18 it could be fulfilled by our exchange directly or by another
19 exchange indirectly.

20 Q. And this obviously would be on the Internet?

21 A. That was the idea.

22 Q. The split was going to be 60 percent/40 percent in
23 Mr. Ulbricht's favor?

24 A. That sounds about right. Can I look at the contract?

25 Q. Sure. I don't have a contract, but I'll show you something

Flmgulb5

Bates - cross

1 that's marked 3513-64. Directing your attention to a specific
2 part and then ask you if it refreshes your recollection. Look
3 at the bracketed -- the first bracketed one.

4 A. Okay. What is your question?

5 Q. That the proposed split would be 60/40, Mr. Ulbricht and
6 you, for the bitcoin exchange?

7 A. There is a contract that was written out that specifies
8 that specifically, but that number sounds correct to me.

9 Q. You testified today that -- about why you withdrew from
10 that project, but principally, it was because you were
11 unwilling to put in the time because of your other job, right?

12 A. That was definitely a major factor.

13 Q. And it was something that required a lot of work?

14 A. That is correct.

15 Q. And a lot of programming work, right?

16 A. That is also correct.

17 Q. And that's your specialty?

18 A. Yes.

19 Q. And that was your responsibility for the particular
20 project, right?

21 A. Yes, I believe that that is specified in the contract that
22 wasn't signed.

23 Q. So, as you mentioned, you asked -- you asked Mr. Ulbricht
24 to explain bitcoin to you, right, back in March of 2011?

25 A. That sounds correct.

Flmgulb5

Bates - cross

1 Q. And you obtained a bitcoin wallet, right?

2 A. Yes, at some point. I don't recall exactly when but yes, I
3 did.

4 Q. Would April 2011 sound right?

5 A. That's perfectly possible it was at that time.

6 Q. Let me show you 3513-31.

7 A. Okay.

8 Q. Let me show you 3513-31 and ask you if it refreshes your
9 recollection that you had a bitcoin wallet in April of 2011.

10 A. Yes.

11 Q. And in fact, you had a Google Chat with Mr. Ulbricht about
12 it that day, right?

13 A. That's correct.

14 Q. And you were going to encrypt your bitcoin wallet, right?

15 A. That was something I had planned on doing, yes.

16 Q. And that's for security purposes, right?

17 A. That's correct.

18 Q. And you were going to keep it on a thumb drive, right?

19 A. That's also correct.

20 Q. Now, you also asked Mr. Ulbricht where you could monitor
21 bitcoin exchange rates, right, back at the same time in
22 April 2011?

23 A. That sounds correct. Would this help refresh my memory?

24 Q. No. There's another. 3513-37. I'm going to ask you to
25 just review that and then when you have, let me know.

Flmgulb5

Bates - cross

1 A. I'm sorry. Can you repeat the question one more time.

2 Q. Sure. That you asked Mr. Ulbricht where you could monitor
3 the bitcoin exchange rate, right?

4 A. That's correct.

5 Q. And that's April 28, 2011 is when you did that, right?

6 A. That is correct.

7 Q. And in fact, you had a Google Chat that day about bitcoin?

8 A. Yes.

9 Q. And with respect to the bitcoin exchange project that you
10 had with Mr. Ulbricht, as you testified, it lasted into early
11 November of 2011, right?

12 A. Yes.

13 Q. And it started in the summer?

14 A. The idea started in the summer. I remember the work really
15 ramped up around September and October.

16 Q. Okay. And a lot of it was programming issues that you were
17 trying to solve, right?

18 A. That sounds correct.

19 Q. So, let me show you what's marked as 3513-57. Show you
20 what's marked as 3513-57.

21 A. What number was that again, the last one.

22 Q. Fifty-seven. Look at the bottom right. That's what I'm
23 talking about.

24 A. Okay. Okay. What's your question?

25 Q. And so do you recognize that?

Flmgulb5

Bates - cross

1 A. Yes, I do recognize this.

2 Q. What is it?

3 A. This is a Tor chat between Ross and me.

4 Q. And is it at around the same time or even the same day as
5 Government Exhibit 228, October 2011.

6 A. It's a little bit -- you said October 28?

7 Q. No. The sixth.

8 A. October 6. Okay. Yes, part of this conversation happens
9 on October 6, 2011.

10 MR. DRATEL: I move it in, your Honor, as Defendant's
11 3533-57 -- let's call it R-57.

12 THE COURT: All right. Any objection?

13 MR. HOWARD: No objection, your Honor.

14 THE COURT: Defense Exhibit R-57 is received.

15 (Defendant's Exhibit R-57 received in evidence)

16 THE COURT: Just give me the Bates number one more
17 time.

18 MR. DRATEL: 3513-57, your Honor.

19 THE COURT: Thank you.

20 Q. While we're waiting, let me just ask you some other
21 questions about bitcoin in terms of you, at some point, before
22 this, before October back in the spring of 2011 when you were
23 becoming interested in bitcoin, you were invested in silver at
24 that time?

25 A. That's -- I owned physical silver.

Flmgulb5

Bates - cross

1 Q. But you were also interested in the market price for that
2 at the same time as well?

3 A. Yes, because I own some.

4 Q. And bitcoin was -- looked more attractive as an investment
5 at that time?

6 A. I'm not sure.

7 Q. But you talked about it with Mr. Ulbricht?

8 A. Yes.

9 Q. About the relative attractiveness of bitcoin and silver and
10 how they were doing in the market?

11 A. Yeah. We talked about how they were doing in the market;
12 yes.

13 Q. Mr. Bates, let me have what is highlighted because that
14 makes it easier for me and I'll give you this one and I'll be
15 able to direct you to where it is. Thanks. So if we go about
16 two-thirds down the page -- I'm sorry -- go about one-third
17 down the page at 19:14.

18 A. Okay. 19:14.

19 Q. It says -- if we can just make that a little larger if
20 possible and I can read it here, but I don't know if everybody
21 can read. Okay.

22 "R" is you, correct, Mr. Bates?

23 A. Yes, that's correct.

24 Q. "I need to talk to you sometime about you interact with
25 bitcoin.

Flmgulb5

Bates - cross

1 R: I can use the bitcoinj lib, but I don't know what
2 I'm doing."

3 And L-I-B, do you mean library?

4 A. Yes.

5 Q. And "myself" is Ross?

6 A. That's correct.

7 Q. "Okay. Let me look up the link, just a sec. Have you read
8 this."

9 And this is Ross again. And that's a link, correct?

10 A. Yes, that is a link.

11 Q. This is Ross again: "I of course used the JSON-RPC PHP
12 library, but they have examples for a bunch of different
13 languages.

14 Myself: Including java and perl.

15 Myself: I've gotta jump in the shower, ttyl."

16 And what does that mean?

17 A. Talk to you later.

18 Q. "R" is you. "Suweet."

19 And is that just the spelling of the word sweet with
20 an extra syllable in there?

21 A. Yes. It's meant to be stressed, but yes, it says suweet.

22 Q. "And this is JSON too.

23 R: I should be able to use what I wrote today to
24 access this too.

25 R: So you have everyone's bitcoin address in one

Flmgulb5

Bates - cross

1 instance of bitcoind.

2 R: Okay. This is pretty neat.

3 Myself: Tell me more about what you are working on."

4 And there's an emoticon.

5 "R: Okay. I think I'm going to start by making a
6 JSON-RPC wrapper to bitcoin documentation says it only accepts
7 local calls by default. Reply when you get this."

8 So you're talking there about the technical aspects of
9 writing program for this bitcoin exchange, right?

10 A. Yes.

11 Q. And further on down the page at 1909, and I'll just
12 summarize it, you are also talking about making a java wrapper,
13 right? Go to 1909.

14 A. Yes, that's correct.

15 Q. And so you're talking about making a java wrapper so you
16 can do the bitcoin stuff in java, right?

17 A. That's correct.

18 Q. And java being a program language, right?

19 A. Yes. Java is a programming language.

20 Q. Thank you. And you continued to talk to Mr. Ulbricht
21 throughout -- even into 2013 about bitcoin, correct?

22 A. Yes. I believe we probably had conversations about it.
23 Again, if you have something to refresh my memory.

24 Q. Sure. Let me show you what's been marked as Defendant's

25 AA. So, after you've had a chance to look at that, does that

Flmgulb5

Bates - cross

1 refresh your recollection that in April of 2013 you were
2 discussing bitcoin and bitcoin values and trading bitcoin with
3 Mr. Ulbricht by chat?

4 A. I was not trading bitcoins with Mr. Ulbricht.

5 Q. No, I don't mean -- the discussion with Mr. Ulbricht?

6 A. Yes. The discussion was with Mr. Ulbricht and it was about
7 bitcoin prices and that I had just sold some.

8 Q. Very good. Now, you know at certain points -- withdrawn.

9 At certain points in the spring of 2011, Mr. Ulbricht
10 and you discussed trading in bitcoin and money that could be
11 made in terms of the fluctuating price of bitcoin, right?

12 A. That sound correct.

13 Q. And in April of that year, Mr. Ulbricht told you -- and you
14 would be chatting with the Google chats, right?

15 A. Yes.

16 Q. And Mr. Ulbricht told you that he made \$4,000 over one
17 weekend if he sold out, if he had sold; in other words, the
18 appreciation in value?

19 A. Is that in -- I'm having trouble remembering that again.

20 Q. Okay. That's the 3513-37.

21 A. Ah, there we go. Yes.

22 Q. Okay. Right?

23 A. Sorry.

24 Q. I'll repeat the question.

25 A. Repeat the question.

Flmgulb5

Bates - cross

1 Q. That if he had sold his bitcoins that weekend, he would
2 have made \$4,000?

3 A. Yes.

4 Q. And that ultimately in May, he does sell some bitcoins. In
5 a chat he mentions to you that he sold all of his bitcoins and
6 that he was going to get back in the market, hopefully at a
7 lower price. That's a different one. Let me show you -- let
8 me refresh your recollection of that. This is 3513-38. Let me
9 know when you're finished.

10 A. Okay.

11 Q. Does that refresh your recollection that in a chat on
12 May 31, 2011, Mr. Ulbricht told you that he had sold all of his
13 bitcoins and was trying to get back in at under a dollar?

14 A. Yes. That's what he told me.

15 Q. And a couple of weeks later, you mentioned to him that his
16 prediction of a bitcoin crash in the price had been correct and
17 that bitcoin had, in fact, gone down in value?

18 A. I do recall there being a crash sometime around that time.
19 I don't remember Ross' prediction. I'm sorry. This was all
20 many years ago.

21 Q. I'm sorry. That's a different one. I'll go back to that
22 in a minute, but since you have this one here now, also,
23 Mr. Ulbricht in June of 2011 told you that he would have made
24 \$250,000 if he had cashed out -- rather, he tried to, but that
25 the market had closed, that he was unable to?

Flmgulb5

Bates - cross

1 MR. HOWARD: Objection; hearsay.

2 THE COURT: Are you offering it for the truth?

3 MR. DRATEL: No, your Honor.

4 THE COURT: All right.

5 You can answer.

6 A. Yes. There was an incident where Mt.Gox was hacked. There
7 was extreme volatility. And he told me, you know, he would
8 have made a quarter of a million dollars if he had -- if
9 his -- I believe he said that his orders were undone as part of
10 Mt.Gox's correction.

11 Q. You also had a discussion with Mr. Ulbricht about bitcoin
12 mining, right?

13 A. About -- are you asking about how bitcoin mining -- we had
14 discussions about how bitcoin mining works?

15 Q. Yes.

16 A. I think that that's probable that we did.

17 Q. Now, in terms of your relationship with Mr. Ulbricht, he
18 was a fun person to be around?

19 A. Very much so.

20 Q. And you also shared some political philosophy, right?

21 A. At that time, yes.

22 Q. And you mentioned, and it comes up in some of the chats
23 that are in evidence, Mr. Ulbricht's girlfriend he was living
24 with at the time in Austin, right? Her name was Julia?

25 A. Yes.

Flmgulb5

Bates - cross

1 Q. It was her friend who put up the Facebook post, correct?

2 A. That is what Ross told me.

3 Q. So there were three people who knew: There was you, there
4 was his girlfriend Julia, as you said on your direct testimony,
5 and that other woman as far as you know, the other woman who is
6 Julia's friend who put something up on Mr. Ulbricht's Facebook
7 page?

8 A. There are four people, if you include Ross himself.

9 Q. Yes, but I'm saying, other than Ross.

10 A. Other than Ross, what I was told was that -- obviously, I
11 knew about it, and I was told about two other people who knew
12 about it.

13 Q. You were the person who wanted to switch over to Tor chat,
14 correct?

15 A. I was the one who found the program, and I did suggest that
16 we use that.

17 Q. And you had to prod Mr. Ulbricht over a period of time to
18 do it, right?

19 A. There were problems connecting on the software. I believe
20 somewhere there's a conversation where we talk about us trying
21 to connect, so we didn't keep that Tor chat connection open all
22 the time. So there were instances where we would say let's go
23 to Tor chat basically.

24 Q. But also wasn't there a series of times where you were on
25 Google Chat and you said we should be doing this on Tor chat?

Flmgulb5

Bates - cross

1 A. That sounds accurate.

2 Q. Now, your relationship with Mr. Ulbricht, did
3 it -- withdrawn.

4 He went to Australia in the fall of 2011, correct?

5 A. He went to Australia and then Costa Rica and a few other
6 places, but at that time, I think it was Australia that he went
7 to.

8 Q. And you didn't know when he would be back at that point?

9 A. I don't believe I did know, no.

10 (Continued on next page)

Flmdulb6

Bates - cross

1 Q. And the relationship dissipated somewhat after that, right?

2 A. Yes, a little bit.

3 Q. And so there were a lot fewer chats in 2012 and 2013 than
4 there were in 2011, correct?

5 A. That's correct.

6 Q. In fact, when he moved to San Francisco, initially you
7 weren't aware of that?

8 A. I was not aware of that initially, but I messaged him and
9 found out he was in San Francisco.

10 Q. Now, I want to talk about you have a background and degree
11 in computer science, right?

12 A. That is correct.

13 Q. And you have been in a programming capacity all your
14 professional life, right?

15 A. That's also correct.

16 Q. And you worked at PayPal, right?

17 A. Yes.

18 Q. And then you left PayPal for eBay, right?

19 A. This actually gets a little complicated because eBay owns
20 PayPal, so technically my contract was with eBay and I have
21 moved within that organization.

22 Q. And one of the things you have done as a programmer at
23 PayPal is designing portions of adaptive payment systems?

24 A. That is correct.

25 Q. Did that give you some insight into creating this bitcoin

Flmdulb6

Bates - cross

1 exchange?

2 A. Actually, I don't think so.

3 Q. Was that basically from the ground up, the bitcoin part?

4 A. Yeah, the bitcoin exchange would have been from the ground
5 up. There were a lot of -- you know, this is really managing
6 buy-and-sell orders, which is a little different than what I
7 was doing at PayPal, which is, you know, just processing a
8 transaction.

9 Q. Now, you've seen some of the government exhibits that
10 you've looked at this morning from the chats, right? And I
11 want to talk about the technical discussion between you and
12 Mr. Ulbricht in 2010, in 2011, OK?

13 So in terms of the dates, those are all either in the
14 latter part of 2010 running through the spring of 2011,
15 correct?

16 A. To my recollection, yes.

17 Q. Well --

18 A. Well --

19 Q. We can look -- we can just go through them and --

20 A. Pardon me. The question is our technical conversations
21 went through --

22 Q. Withdrawn.

23 A. OK.

24 Q. When you were asked by Mr. Ulbricht, in 2010, about
25 technical questions, the initial questions were about a

Flmdulb6

Bates - cross

1 programming language called Perl, right, P-e-r-l?

2 A. Yes, that's correct.

3 Q. And that was about the Good Wagon Books Company that
4 Mr. Ulbricht was running, right?

5 A. That is what he told me, yes.

6 Q. And he was trying to work on a website, right?

7 A. That's what he told me.

8 Q. And you were able to help him with respect to certain of
9 those questions that he had, right?

10 A. I certainly tried. I think I did.

11 Q. Well, let's look at Government Exhibit 1,000, please.

12 So if you look at that chat, is there any doubt in
13 your mind that it's about Good Wagon Books and not Silk Road?

14 A. If you go to the bottom of this chat, he does tell me this
15 is about the artofbooks.com.

16 Q. Right. So -- but I'm saying in terms of the technical part
17 of it, the Perl part of it, is there anything that would lead
18 you to believe that it had anything to do with Silk Road, which
19 you were discussing later on?

20 A. The only thing he did -- I know that he did lie to me now.
21 It's possible, but I think it's a reasonable assumption to
22 assume -- sorry, I'm not supposed to assume, am I?

23 Q. That's right.

24 A. Umm, I --

25 Q. Is there anything technical about that in the Perl language

Flmdulb6

Bates - cross

1 that had anything to do with what you know about Silk Road?

2 A. No.

3 Q. And all the Perl discussions are about that subject,
4 correct, about Good Wagon Books, to your knowledge?

5 A. I believe so.

6 Q. Now, when Mr. Ulbricht starts talking about php, that's
7 different, correct?

8 A. My recollection is when he switched to php is when I began
9 asking him what he was working on, and that's when he started
10 telling me it was top secret.

11 Q. Right. And that's in the early part of 2012 -- I'm sorry,
12 2011. Sorry, the early part of 2011?

13 A. I think it may go back into late 2010.

14 Q. And he had questions for you about Ubuntu, right?

15 A. Yes, he did.

16 Q. And about Debian, D-e-b-i-a-n?

17 A. Yes.

18 Q. Now, was he -- withdrawn.

19 He was having some difficulty with those things,
20 correct, with some of the programming issues?

21 A. I don't know if that's accurate. Debian and Ubuntu are
22 operating systems so there wouldn't be necessarily programming
23 involved.

24 Q. How about php?

25 A. Php is a programming language, yes, so --

Flmdulb6

Bates - cross

1 Q. So he was getting frustrated, he told you, right, about
2 php -- about learning php?

3 A. I don't recall him saying he was frustrated about learning
4 php but he did have issues with php.

5 Q. I am going to show you what's marked as Defendant's P.

6 (Pause)

7 MR. DRATEL: OK. We'll come back to that.

8 Q. OK. So when you first saw Silk Road, you said you were
9 intrigued by it, correct?

10 A. I was intrigued by the technology that it was built upon.

11 Q. And even the concept, right? You compared it to
12 Craigslist, did you not?

13 A. I think at one point I probably did.

14 Q. And so even after that point you had continued to assist
15 Mr. Ulbricht with respect to technical questions that he had?

16 A. We're talking about 2011 again?

17 Q. 2011, yes, the first half of 2011.

18 A. Yes, I did help him.

19 Q. You may have provided him code on occasion, right?

20 A. I believe that there were times I provided code snippets in
21 chat. I don't remember writing any code. At that time I had a
22 particular disdain for php so I really think I would have
23 remembered if I had written any significant php.

24 Q. And he would send you code -- Mr. Ulbricht would send you
25 code occasionally?

Flmdulb6

Bates - cross

1 A. Again, he sent me code snippets.

2 Q. Right. And you would review it and delete it, right?

3 A. Review it and delete it?

4 Q. Yes.

5 A. I don't -- oh, yeah. Sorry. There was one time over
6 TorChat that he did send me a zip file that had the php code
7 for the Silk Road website. I looked at that. He asked me to
8 review it. I looked at it for a little bit and ultimately did
9 end up just deleting it.

10 Q. So one of the reasons why you deleted it is you didn't want
11 it on your computer, right, anything connecting you to that?

12 A. Yes.

13 Q. OK. You can look at P now, Defendant's P.

14 A. Mm-hmm.

15 Q. And I just ask you if you recognize that?

16 A. I have no reason to believe that this is not an actual
17 conversation, but I don't remember it very well. But we can
18 talk about it.

19 Q. But April 2011, right?

20 A. Yes.

21 Q. Actually, I just ask you if it refreshes your
22 recollection --

23 A. A little bit, yes.

24 Q. -- that Mr. Ulbricht was frustrated trying to learn Cake,
25 C-a-k-e, php?

Flmdulb6

Bates - cross

1 A. Yes, which I'm not sure what that is right now. I believe
2 it might be a module or library on top of php.

3 Q. In terms of Mr. Ulbricht's state of mind during this
4 period, as time passed you observed that he was getting under
5 more and more stress, correct, during the period in 2011 now
6 that we are talking about -- that first half of 2011?

7 A. There were times when he seemed stressed, as is evidenced
8 by the voicemail.

9 Q. Yes. And, also, though, you observed that it was occupying
10 too much of his time and he was dealing with crises on the
11 site, right?

12 A. He did have a number of, you know, problems with running
13 the Silk Road, yes.

14 Q. And you observed that that was wearing on him, correct?

15 A. That's my opinion.

16 Q. Yes. And you told him that you thought it was a good idea
17 for him to get out because it was having an effect on him?

18 A. I did tell him -- I don't recall if I did, actually. I do
19 remember that on November 11th I did tell him to shut down the
20 site.

21 Q. But he did express to you on some of the chats that we saw
22 and other times that you met him in person that he was stressed
23 out by all of this?

24 A. Yes.

25 Q. He also told you he was overwhelmed, right?

Flmdulb6

Bates - cross

1 A. That's possible. Again, is there something to help me
2 remember?

3 Q. I show you what's marked as 3513-25. Just look at the
4 highlighted portion.

5 Does that refresh your recollection that March 29,
6 2011 in a chat Ross told you he was overwhelmed?

7 A. Yes, he did tell me on this date that he was overwhelmed.
8 I'm not sure based on the context if this is about Silk Road or
9 not but it very well possibly could be.

10 Q. Now, after Mr. Ulbricht returned from Australia and from
11 some other trips, you were in touch with him in May of 2012,
12 correct?

13 A. That sounds correct.

14 Q. And you chatted with him and you asked him how he was doing
15 and he said "chillin'," right?

16 A. Again, you're going to have to refresh my memory but that
17 sounds right.

18 (Pause)

19 MR. DRATEL: Just a second, your Honor. I'm sorry.

20 (Pause)

21 Q. So -- and occasionally you said that you would send
22 Mr. Ulbricht certain articles or links that you had seen about
23 Silk Road, correct? This is during 2012.

24 A. Yeah, this is going on 2012 into 2013.

25 Q. Right.

Flmdulb6

Bates - cross

1 A. Yes.

2 Q. And ultimately he asked you not to send him any more,
3 correct?

4 A. Yes.

5 Q. And you saw Government's -- if we could have Government's
6 1004?

7 So Government's 1004, you mention, "There was
8 something posted on Friday that you might have found
9 interesting." Then Ross says, "I'll take a look, thanks."

10 By the way, this is Google Chat, right?

11 A. That's correct. This is on --

12 Q. Not TorChat?

13 A. This is on Google Chat.

14 Q. So -- and then Ross says, "I'll take a look, thanks. Glad
15 that's not my problem anymore." Right?

16 And that's -- what you said to him was about Silk
17 Road, correct?

18 A. That is correct.

19 Q. And then there is an emoticon. And what do you take that
20 emoticon to be?

21 A. That is a smiley face.

22 Q. As in happy, right?

23 A. Yes.

24 Q. And you say, "Yes." Because you are in agreement, right?
25 That is a good thing?

Flmdulb6

Bates - cross

1 A. I'm in agreement that he communicated to me that he was
2 happy.

3 Q. And then he says -- Ross says: "I have regrets, don't get
4 me wrong ... but that shit was stressful."

5 Right?

6 A. That is what it says.

7 Q. Then he asks you to continue to keep the involvement
8 secret, right, that he was involved in?

9 A. Yes.

10 (Pause)

11 THE COURT: Well, I was thinking of taking a short
12 additional break, anyway. And it looks like you are looking
13 for something?

14 MR. DRATEL: Yes, and then I will wrap up, your Honor.
15 I appreciate it.

16 THE COURT: Let's do that. We'll take a short break.
17 We are going to go to 5 o'clock on the dot, or a minute or two
18 before. As I mentioned to you, we are not going to sit
19 tomorrow, on Friday. All right? So when we break at 5, it
20 will be we will break until Monday morning. But for right now
21 we'll just take a short break. And remember not to talk to
22 each other or anybody else about this case. Thank you.

23 THE CLERK: All rise as the jury leaves.

24 THE COURT: You can take a short break, too.

25 (Continued on next page)

Flmdulb6

Bates - cross

1 (Jury and witness not present)

2 THE COURT: Are you folks talking about timing?

3 MR. TURNER: Yes.

4 THE COURT: I am interested, too.

5 MR. TURNER: Your Honor, the issue is our next witness
6 is from San Francisco. I expect my direct to be pretty
7 compact.

8 THE COURT: What does that mean?

9 MR. TURNER: 15 minutes. So I am hopeful we can
10 finish with him today so that he doesn't have to fly back here
11 Monday.

12 THE COURT: The only issue is that we need to end by
13 5, because we do have some jurors, as you folks know, who has
14 got childcare and other issues on the back end. So we can't
15 ask them to stay.

16 You know, how much longer do you have with this
17 witness?

18 MR. DRATEL: Five minute, ten minutes, maybe, at most.

19 THE COURT: OK. So why don't we then just -- we'll
20 try to take as quick a break as we can. Come right back on
21 out. I only broke because we had taken the earlier break and I
22 didn't want to keep people and make them uncomfortable. So we
23 will come back out and just proceed as expeditiously as
24 possible. All right?

25 THE CLERK: All rise.

Flmdulb6

Bates - cross

1 (Recess)

2 THE COURT: Let's get the jury back out. It is always
3 hard to get 15 people out in five minutes, but they are
4 gathered again. It took a little while to get them all rounded
5 up.

6 (Continued on next page)

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Bates - cross

1 THE CLERK: All rise as the jury enters.

2 (Jury and witness present)

3 THE COURT: All right. Let's all be seated.

4 OK. Mr. Dratel, you may proceed, sir.

5 MR. DRATEL: Thank you, your Honor.

6 BY MR. DRATEL:

7 Q. I just want to go back to something we talked about
8 earlier, about the bitcoin market in June of 2011 and you
9 couldn't recall about Mr. Ulbricht making a prediction. So I'm
10 just going to show you what's marked as Defendant's CC.

11 I just ask you to look at that and then I'll ask you a
12 question.

13 (Pause)

14 Does CC refresh your recollection that at some point
15 in June 2011 you commented that the bitcoin market was
16 crashing, just like Mr. Ulbricht said it would?

17 A. Yes.

18 Q. Thank you. And with respect to another one that we just
19 did right before the break, which is in May of 2012, when you
20 asked him what have you been up to and he said "chillin'," so
21 I'm going to show you what's marked as Defendant's P.

22 A. The date on this is accurate?

23 MR. DRATEL: Yes. Your Honor, we have an agreement
24 that the date is accurate because it is a series of chats sort
25 of in a row.

Flmdulb6

Bates - cross

1 MR. HOWARD: That is correct, your Honor.

2 THE COURT: All right.

3 Q. So does that refresh your recollection that May 15, 2012,
4 you reached out to Mr. Ulbricht and said "How are you doing"
5 and he said "chillin'?"

6 A. Yes.

7 Q. Thank you. Now, in terms of your meetings with the
8 government, did you ever bring them your laptop for review?

9 A. No.

10 Q. Ever bring them a desk-top for review?

11 A. No.

12 Q. Ever bring them anything you ever worked on, any computer
13 you worked on for review?

14 A. No.

15 Q. And there were two people who knew about your
16 involvement -- beside yourself, two people who knew about your
17 involvement in Silk Road, right?

18 A. At which time?

19 Q. At the time -- before you were confronted by the government
20 in October of 2013, there were two people who knew about your
21 involvement in Silk Road, correct -- Mr. Ulbricht, right?

22 A. Mm-hmm.

23 Q. And a woman you confided in sometime in 2012?

24 A. In 2012?

25 Q. Well, when was it? You confided in a woman that you had

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Bates - cross

1 involved in Silk Road, correct?

2 A. I tried to confide in a woman and a particular friend of
3 mine in 2011. I don't think it was communicated across. We
4 were both at a bar drunk.

5 Q. Is that Shelli?

6 A. Yes.

7 Q. Didn't she say she didn't want to hear any more about it
8 when you told her about that?

9 A. I don't remember. Maybe.

10 Q. Maybe.

11 MR. DRATEL: I have nothing further, your Honor.

12 Thank you.

13 THE COURT: Thank you.

14 Mr. Howard, anything further?

15 MR. HOWARD: The government has no further examination
16 of this witness.

17 THE COURT: All right. You may step down, sir.

18 (Witness excused)

19 THE COURT: All right. Would the government call
20 their next witness, please.

21 MR. HOWARD: Your Honor, before we do that, the
22 government would like to read just one Tor chat excerpt that is
23 already admitted into evidence as we get the witness.

24 THE COURT: All right. What government exhibit is
25 this?

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1 MR. HOWARD: Just give me one moment and I will pull
2 it up. It is 226D, as in dog.

3 Mr. Evert, could you publish it.

4 Page 59 of 1,096. December 9, 2011:

5 "vj: IRL - is there anyone with a clue at all?
6 Girlfriend, boyfriend, bunny you talk to, online buddy's who
7 you've know for years? Gramma, priest, rabbi, stripper?

8 "myself: unfortunately yes. There are two, but they
9 think I sold the site and got out and they are quite convinced
10 of it.

11 "vj: good for that - when do they think you've sold?

12 "myself: about a month ago

13 "vj: and do they now notice the demands on your time?
14 These the kinda people you'll know forever, or would a move
15 work someday?

16 "myself: no, I live no where near them anymore. One
17 I'll prob never speak to again, and the other I'll drift away
18 from."

19 Continuing from the same chat on page 314 of 1,096 on
20 January 15, 2012:

21 "vj: Have you even seen The Princess Bride?

22 "myself: growing up my parents had the last half of
23 spaceballs and the last 3/4 of the Princess Bride and all of
24 Romancing the Stone. that pretty much sums up my personality.

25 "vj: Well, that's about as well rounded as one can

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1 get. So you know the history of the Dread Pirate Roberts.

2 "<-- it's a thought I'm working on, so humour me

3 "myself: can't quite remember.

4 "myself: Wesley was him though yea. Took up his name

5 "vj: and over the years, a new one would take the
6 name, and the old one would retire.

7 "myself: yep

8 "vj: You need to change your name from Admin, to Dread
9 Pirate Roberts

10 "<-- isn't kidding - start the legend now

11 "myself: I like the idea

12 "vj: <-- has just put 12 solid hours of thought into
13 it. Clear your old trail - to be honest, as tight as you play
14 things, you are the weak link from those two prev contacts

15 "myself: goes along with my captain analogy

16 "vj: and the whole thing - I quite love it."

17 MR. TURNER: Your Honor, the government calls FBI
18 Special Agent Forensic Examiner Christopher Beeson to the
19 stand.

20 THE COURT: All right. Mr. Beeson.

21 THE CLERK: Please raise your right hand.

22 CHRISTOPHER JON BEESON,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE CLERK: Please state your full name and spell your

Flmdulb6

1 last name for the record.

2 THE WITNESS: It's Christopher Jon Beeson,
3 C-h-r-i-s-t-o-p-h-e-r J-o-n B-e-e-s-o-n.

4 THE COURT: Mr. Beeson, please be seated. And it will
5 be important for you to pull your chair up so you can speak
6 clearly and directly into the mic, sir.

7 THE WITNESS: Very good. Thank you.

8 THE COURT: All right. Mr. Turner.

9 DIRECT EXAMINATION

10 BY MR. TURNER:

11 Q. Agent Beeson, who do you work for?

12 A. I work for the Federal Bureau of Investigation.

13 Q. How long have you worked for FBI?

14 A. I've worked for the FBI for 28 years, the last 20 as a
15 special agent.

16 Q. What FBI office are you assigned to?

17 A. I am assigned to the San Francisco office of the FBI.

18 Q. And what are your duties at that office?

19 A. I'm assigned to the Silicon Valley Regional Computer
20 Forensic Laboratory, where I am a Special Agent Forensic
21 Examiner.

22 Q. And as part of your role as a Special Agent Forensic
23 Examiner -- I should say, by "forensic examiner," are you
24 talking about computer forensics or another type of forensics?

25 A. Computer forensics.

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Beeson - direct

1 Q. As part of your role as a Special Agent Forensic Examiner,
2 are you ever called in to help with seizures of digital
3 evidence for investigations by FBI offices outside San
4 Francisco?

5 A. Yes, I am.

6 Q. What typically is your role in those situations?

7 A. Typically when we are involved in collection of digital
8 evidence for other FBI offices, our role is simply that, to
9 collect and preserve digital evidence. So identify particular
10 computer devices, what's going to be seized, etc., and then it
11 will be forwarded on to the other FBI office for analysis.

12 Q. On October 1, 2013, were you called upon to help in
13 connection with an arrest of a target of the FBI New York field
14 office?

15 A. I wasn't called upon to assist with the arrest but, rather,
16 the search of computer evidence.

17 Q. OK. The recovery of that evidence?

18 A. Yes.

19 Q. Whose arrest was it?

20 A. It was the arrest of Ross Ulbricht.

21 Q. Where were you called upon to go that day?

22 A. We were told to respond to 235 Monterey Boulevard in San
23 Francisco.

24 Q. Do you know whose residence that was?

25 A. I was told it was the residence of Ross, Mr. Ulbricht.

Flmdulb6

Beeson - direct

1 Q. Was this before or after Mr. Ulbricht had been arrested?

2 A. I'm sorry, counsel, one more time.

3 Q. Was this before or after Mr. Ulbricht had been arrested?

4 A. I was called just following his arrest.

5 Q. So approximately what time of day did you arrive at the
6 residence?

7 A. I arrived about 5:30 p.m.

8 Q. Anyone come to assist you?

9 A. Yes. One of our Task Force officers, Sergeant Brian
10 Rodriguez, with the San Francisco police.

11 Q. Were any law enforcement personnel already there by the
12 time you arrived?

13 A. Yes. There were several FBI agents already on the scene.

14 Q. Did that include Thomas Kiernan from the New York field
15 office?

16 A. Yes, Mr. Kiernan was there.

17 Q. What was Mr. Kiernan doing when you arrived?

18 A. He was accessing a laptop inside the residence in one of
19 the bedrooms.

20 Q. I'm showing you what's already been marked as Government
21 Exhibit 200 and admitted into evidence.

22 When you have a chance to look at it, can you tell me,
23 do you recognize this exhibit?

24 A. I do.

25 Q. And how does this laptop compare to the one you saw

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Beeson - direct

1 Mr. Kiernan working on?

2 A. It's the same laptop.

3 Q. How can you tell?

4 A. Looking at the markings on the back of the laptop, I can
5 see from previously reviewing pictures that it has markings and
6 stickers on the back that indicate it is the same.

7 Q. Those pictures you took?

8 A. Yes, they are.

9 Q. So what were you there to do exactly with the laptop?

10 A. So my role in this instance was to assist in the collection
11 of the data that's on the laptop; basically, copy the data off
12 of it.

13 Q. And who did you understand would be responsible later for
14 actually reviewing the contents of that data?

15 A. I didn't know a particular individual was going to be
16 responsible, but I know that it was going to go to the New York
17 FBI office.

18 Q. In the ideal situation, what procedure do you use to copy
19 the contents of a computer when you observe it?

20 A. So typically when we respond to a site and we're going to
21 collect a computer or digital evidence, what we're going to do
22 is we're going to start from a computer that's powered off.
23 Right? We aren't going to typically use one that's powered on.
24 We're going to power it down. And we're going to frequently
25 remove the hard drive, and we're going to copy all the data

Flmdulb6

Beeson - direct

1 that is on the hard drive off to one of our own hard drives or
2 some other form of storage.

3 Q. Why does it help to turn the computer off like that?

4 A. Well, when file systems are live and up and running, the
5 data can change as things are going on. And so what we do is
6 by powering it down, all that data is isolated on the hard
7 drive. It can't be altered in any way.

8 Q. Now, could you do that here?

9 A. We couldn't do that here.

10 Q. Why not?

11 A. Well, once I responded to the scene and spoke with
12 Mr. Kiernan, he advised that the laptop was encrypted. It was
13 using a form of encryption. And so when encryption is deployed
14 on a computer, frequently if we don't have the password there
15 is nothing that we can do with that data if it is encrypted.
16 Right? We would have to break that encryption.

17 So in this instance we had to capture the data while
18 the computer was still running.

19 Q. So walk us through what you were able to do with this
20 laptop.

21 A. So once we took possession of the laptop from Mr. Kiernan,
22 what I did is I started off by copying data that we believe
23 would be most useful. And we did that in the form of what is
24 called a Tarball. Similar to, for a Windows user, it would be
25 like a zip file. A lot of people have seen zip files. It is

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Beeson - direct

1 just a way to containerize files.

2 And we started by creating those Tar images of groups
3 of data which we believe would be of most value. You see, in
4 this instance, we didn't have enough time to know how long we
5 were going to have access to this laptop.

6 Q. So when you got it, you said it was encrypted but do you
7 mean it was actually encrypted or there was just a danger of it
8 becoming encrypted?

9 A. So the data is encrypted on the laptop, but the operating
10 system, like Windows -- this particular laptop was using Ubuntu
11 Linux -- the operating system was interfacing between that
12 encryption and allowing that data to be seen and viewed and
13 copied.

14 Q. So just in layman's terms, was the computer on?

15 A. Yes, the computer was on.

16 Q. And was it logged in?

17 A. Yes, it was logged in.

18 Q. So you had access to the account that was logged in?

19 A. Yes. It would be just as if any of us logged into our
20 normal computer at work. It was sitting there waiting for what
21 would you like us to do.

22 Q. OK. So while the computer was in this live state, were you
23 able to determine whether you had access to all of the data on
24 the hard drive or only some of it?

25 A. Well, so what we determined was that the computer was set

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Beeson - direct

1 up in such a way that it could either run Windows or Ubuntu
2 Linux.

3 Q. So it had a Linux half and a Windows half?

4 A. Essentially, yes.

5 Q. What part of it did you have access to?

6 A. At that time it was running Ubuntu Linux.

7 Q. It can't operate both at the same time?

8 A. Not at the same time.

9 Q. So what did you do while you were logged into the Linux
10 side of the computer?

11 A. Could you be more specific?

12 Q. So you had access to the Linux side of the computer.

13 A. Mm-hmm.

14 Q. What did you do to recover data?

15 A. Like I said, initially what I did was I started looking at
16 the home directory. For example, on Linux that would be like
17 the "my documents" folder in your Windows computer. Right?
18 And I started by containerizing all the files that were in that
19 folder on the laptop, and then I did a series of other folders.
20 OK?

21 And once I completed that and we still had access to
22 the laptop, we decided that we wanted to make an image, which
23 is a complete copy, of the unencrypted version of the whole
24 volume or partition that was running Linux. The hard drive is
25 divided into multiple segments, and one of those segments was

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Beeson - direct

1 fully accessible at that moment for us and so I wanted to
2 create an image of that.

3 Q. And by "partition" you are referring to the Linux half of
4 the computer?

5 A. Yes. Exactly.

6 Q. OK. So were you able to make a complete copy of that Linux
7 partition?

8 A. I was.

9 Q. And where did you copy the data onto?

10 A. I copied the data onto an FBI-owned hard drive.

11 Q. I'm showing you what's been marked as Government Exhibit
12 500.

13 (Pause)

14 Do you recognize this exhibit?

15 A. I do.

16 Q. How do you recognize it?

17 A. It is a hard drive which contains consolidated data from
18 our search.

19 Q. And among the data on the hard drive, did you include the
20 data from the Linux half of the computer, the Linux half of the
21 laptop?

22 A. Yes, I did.

23 Q. Did you give that data a filename on that hard drive?

24 A. Yes, I did.

25 Q. What was that file name?

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Beeson - direct

1 A. That file name was sda_crypt.dd.

2 Q. Is it sda or sda4_crypt?

3 A. I have to refer to my notes. I thought it was sda4_crypt.

4 Is that right? Did I say sda?

5 Q. You said "sda" originally. So which is right?

6 A. Sda4. Thank you.

7 Q. Besides the laptop, were there any other digital devices
8 that you helped preserve as part of Mr. Ulbricht's arrest?

9 A. Yes, we did.

10 Q. Showing you what's been marked, already been admitted into
11 evidence, as Government Exhibit 502.

12 A. OK.

13 Q. Do you recognize this exhibit?

14 A. Yes, I do.

15 Q. How do you recognize it?

16 A. This exhibit is marked with a yellow sticker. It's also a
17 16 gig SanDisk USB thumb drive.

18 Q. And there is another thumb drive in there as well?

19 A. That is correct. There is also a 4 gigabyte USB thumb
20 drive. Looks identical, almost.

21 Q. So what did you do with these thumb drives?

22 A. So these thumb drives were brought to me later and I imaged
23 them in their entirety.

24 Q. And what did you do with that copy of the data?

25 A. That data was also consolidated onto this disc, Government

Flmdulb6

Beeson - direct

1 Exhibit 500.

2 Q. And what did you do with the -- I'm sorry.

3 The thumb drives, what is the exhibit number you see
4 in front of you?

5 A. I see 502A.

6 Q. OK. I think I misspoke and I said 502. So let the record
7 reflect that 502A is in front of the witness.

8 So once you loaded all this data onto the hard drive,
9 what did you do with the hard drive?

10 A. So once we consolidated everything onto this drive here,
11 this hard drive was shipped to the FBI New York Field Office.

12 Q. Before you sent the hard drive to the New York Field
13 Office, did you hash the various files that you put onto the
14 drive?

15 A. Yes, I did.

16 Q. Including the sda4_crypt file?

17 A. Yes, sir, I did.

18 Q. And the files from the thumb drives?

19 A. Yes.

20 Q. And can you explain what it means to hash a file and why
21 that is done?

22 A. Sure. So a hash is a way to generate a digital fingerprint
23 of data. OK? And it's unique to that group of data. It's a
24 way that we can authenticate a file to make sure it hasn't
25 changed.

Flmdulb6

Beeson - direct

1 Q. OK. So if you take the sda4_crypt file, how do you hash
2 it?

3 A. How do I hash it?

4 Q. Yes.

5 A. So what I'm going to do is I'm going to use a tool,
6 computer tool application, and I'm going to run -- I'm going to
7 tell the application to read this file in, and the application
8 will take all the data, the data stream in that file, and will
9 generate a hash value.

10 Q. Is that like a long string of numbers?

11 A. It is. It is a 32-character hexadecimal string, so it is
12 numbers and letters.

13 Q. And if you have one file that is just a tiny bit different
14 than another, what is the difference between the hashes?

15 A. It is substantially different. So when you look at two
16 hashes, if the file is changed in only the smallest way -- a
17 period is deleted from a text file, for example -- the hash
18 will result in an entirely different appearing value.

19 Q. So the hash values that you calculated, did you record them
20 anywhere?

21 A. I did.

22 Q. Would you take a look at what's been placed in front of
23 you, the binder of exhibits, there is an Exhibit there 500A.

24 Do you recognize this document?

25 A. I do.

Flmdulb6

Beeson - direct

1 Q. What is it?

2 A. It is a -- this is a file -- a printed file that I created
3 that has the hash value and file name of every file that we
4 provided on this hard disc to the FBI in New York.

5 MR. TURNER: The government offers Exhibit 500A into
6 evidence.

7 MR. DRATEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 500A received in evidence)

10 MR. TURNER: Publish 500A, please, and go to the
11 middle of page 2 and zoom in at sda4_crypt.

12 Q. Mr. Beeson, can you help me find it?

13 A. Yes. It is in the center of the page. I lost the laser
14 pointer that somebody gave me. There we go.

15 Q. So maybe we can zoom in right there.

16 Is that the hash value you calculated?

17 A. Yes. It is the hash value that starts with "1e610e."
18 There we go.

19 Q. And could you take a look at Government Exhibit 502A --
20 sorry, is it 205A?

21 (Pause)

22 A. I believe it's 502.

23 Q. It's 205A. We've already actually gotten it into evidence.

24 MR. TURNER: Could we put it on the screen, Mr. Evert?

25 THE WITNESS: My apologies.

Flmdulb6

Beeson - direct

1 MR. TURNER: That is not it.

2 Q. 502. Sorry about that.

3 Do you see 502 in your binder?

4 A. I do, sir.

5 Q. OK. Did you create that document?

6 A. I did.

7 Q. What is it?

8 A. This is a printed log from one of the tools that we use to
9 create forensic images of media, whether it be thumb drives,
10 hard drives.

11 Q. And so what does it reflect?

12 A. It is a summary of information from a log -- 16-gigabyte
13 hard drive, Government Exhibit 502A.

14 Q. Does it include a hash value for the data from the
15 16-gigabyte thumb drive that you referenced earlier?

16 A. It does.

17 Q. Where is that hash value reflected?

18 A. It is actually reflected in two places on that document.
19 One is where it said "computed hashes" about the middle of the
20 page, "md5 checksum." Yes. And then again at the bottom where
21 it was re-verified that it was the same.

22 So the first hash was when we copied the data, and
23 then we copied it to all of those files that are listed there,
24 USB Sandisk 801, 802. And then the lower hash value indicates
25 that it again checked and the fingerprint was the same in both

Flmdulb6

Beeson - direct

1 instances.

2 Q. So you had fingerprinted the data. You sent it to the New
3 York field office. And then what can the New York field office
4 do with those fingerprints?

5 A. So they can also hash this data and make sure that the data
6 didn't change or get damaged at any time during shipping or
7 during access.

8 Q. Did you take any pictures while you were working on the
9 laptop?

10 A. I did.

11 Q. Can you take a look at 501A, B, C and D in your binder and
12 tell me if you recognize those.

13 (Pause)

14 A. Yes, I recognize them.

15 Q. And what are they?

16 A. These are screenshots that I took of the laptop when --
17 well, a while after we had imaged it. We had already made our
18 copies. And I took these screenshots there of open Windows
19 applications that were running on the laptop when I first
20 encountered it.

21 (Continued on next page)

Flmgulb7

Beeson - direct

1 BY MR. TURNER:

2 Q. What did you take those shots with?

3 A. My FBI-issued camera.

4 Q. And does the exhibit reflect the time that the camera shots
5 were taken?

6 A. The metadata from each picture is here, yes.

7 Q. Does the metadata accurately reflect the time that the
8 shots were taken?

9 A. Yes. So it turns out that my camera was about 40 minutes
10 slow at the time I took these pictures. So all the times
11 reflected in the metadata for the picture is 40 minutes slow.

12 Q. Okay.

13 MR. TURNER: The government offers these Exhibits
14 501A, B, C and D into evidence, your Honor.

15 MR. DRATEL: No objection.

16 THE COURT: Received.

17 (Government's Exhibits 501A-501D received in evidence)

18 Q. Can we look at 501A. Please. What does this depict?

19 A. 501A is a picture of an open Tor browser session.

20 Q. And 501B?

21 A. This is the lower half of the same browser window.

22 Q. 501C?

23 A. This is a photograph of an open chat session.

24 Q. And 501D?

25 A. This is a picture I took of some commands that I was

Flmgulb7

Beeson - direct

1 issuing in trying to copy the laptop early on, and I wanted to
2 record it for -- mostly for my note-keeping, my recordkeeping.

3 Q. At the bottom, there's a line that says frosty@frosty. Can
4 you explain what that reflects.

5 A. Sure. Frosty@frosty in Linux or in Unix, the host name for
6 the system and the user in this system show up here in these
7 terminal windows. So what this indicates is that the user
8 Frosty is currently logged into the host or the computer named
9 Frosty.

10 Q. Can you just break that down a little bit.

11 When you have a computer, let's say in Windows, what's
12 a default host name for a computer in Windows?

13 A. Oftentimes in Windows, it's just "My Computer".

14 Q. And can the user rename the computer?

15 A. They could. They could name it Chris' computer.

16 Q. Can you do the same thing in Linux?

17 A. Absolutely. You can use any host name you'd like.

18 Q. What does it indicate the computer name of this computer
19 was?

20 A. The computer name was Frosty.

21 Q. And on that computer, the user can create accounts on the
22 computer, right?

23 A. That's correct.

24 Q. So what accounts was logged into this computer at the time?

25 A. According to this terminal window, Frosty.

Flmgulb7

Beeson - direct

1 MR. TURNER: No further questions.

2 THE COURT: Mr. Dratel.

3 MR. DRATEL: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. DRATEL:

6 Q. You just mentioned that you took some photographs of the
7 laptop?

8 A. Yes, sir, I did.

9 Q. And the ones that you put in evidence were not the only
10 photographs, correct? You took additional photographs?

11 A. That's correct.

12 Q. Let me show you what's marked as Defendant's H --

13 A. Thank you.

14 Q. -- and just ask you if you recognize that.

15 A. I can't say that I do recognize this as one of the photos I
16 took. I may have. I took numerous photos of open screenshots.
17 I would have to see the file information or the metadata
18 relating to this photo to confirm it.

19 Q. Okay. I'll go --

20 A. Because I did take several shots.

21 Q. Yeah. And several shots of the laptop, right?

22 A. That's correct.

23 Q. I'll move on. We'll find them. So, in terms of trying to
24 capture what was on the laptop, the use of the tar command,
25 correct, T-A-R?

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Beeson - cross

1 A. That's right.

2 Q. That's to archive the files that you tell it to copy,
3 right?

4 A. That's correct.

5 Q. The command is really just essentially like any other
6 command on a computer, just telling the computer what to do
7 with a keystroke or series of keystrokes, right?

8 A. Yes, sir.

9 Q. Essentially, it reads those files and then places them in
10 an archive, the tar command, right?

11 A. That's correct, much like a zip file, sir.

12 Q. And but by doing this, you change all the access times for
13 all those files that you're tar'ing to the time when you tar,
14 right?

15 A. The access times can be changed; yes.

16 Q. Isn't that what happened here, that the access times were
17 all changed by that tar'ing command?

18 A. Because I'm not the forensic analyst on this case, I don't
19 know exactly whether or not those were changed.

20 Q. Well, there's a way to tar without changing access dates,
21 right?

22 A. I am not familiar with the way for sure.

23 Q. But if the access files are changed, then they only reflect
24 the time that you tar'ed it, right, and not the access files
25 that existed on the laptop itself?

Flmgulb7

Beeson - cross

1 A. If, in fact, the access times were changed as part of the
2 archiving process, then, yes, they would have been changed to
3 the current time when the archive was created.

4 Q. Now, you're familiar with the Guidelines for Evidence
5 Collection and Archiving issued in 2002?

6 A. Not specifically, sir.

7 Q. Are you familiar with a section that says don't run
8 programs that modify the access times of all files on the
9 system, e.g., tar or X copy?

10 A. If I'm not familiar with the section, I wouldn't be
11 familiar with that specific --

12 Q. Now, while you were running the tar command on the Frosty
13 directory -- and by the way, Frosty is the main directory on
14 the computer?

15 A. It's the home directory.

16 Q. The home directory.

17 So you received an error message, correct?

18 A. While I'm tar'ing?

19 Q. Yes.

20 A. I may have.

21 Q. Do you recall?

22 A. I don't recall for certain.

23 Q. Let me show you what's part of 3512-1. 3512-1 -- and I'll
24 give you the entirety of it so that you can look at it. Just
25 ask you to look at page three, this is double-sided, and that

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Beeson - cross

1 second paragraph.

2 A. Sure. May I ask you for clarification. I just want to
3 make sure I'm at the right photograph. It starts "Frosty user
4 folder"?

5 Q. Yes.

6 A. I'm ready.

7 Q. Does that refresh your recollection that you received an
8 error message during the tar process?

9 A. Yes, it does. These are my notes.

10 Q. Yes. I'm saying that refreshes your recollection. I have
11 to ask a question a certain way for evidentiary purposes.

12 A. Yes, it does, sir.

13 Q. Okay. Thank you.

14 And the error message was "File changed as we read it
15 exiting with failure status due to previous errors." Right?

16 A. That's correct.

17 Q. And at that point, you weren't sure whether you had
18 properly copied all of the files -- whether the tar process had
19 been completed at the point that you got that error message,
20 correct?

21 A. That's correct.

22 Q. And there are a number of possible reasons for that kind of
23 error message, right?

24 A. Yes.

25 Q. And one is that while the -- as you mentioned -- withdrawn.

Flmgulb7

Beeson - cross

1 Just go back a bit. You talked about live capture
2 versus the machine being off, correct?

3 A. Yes.

4 Q. So if the device is off, then you're not worried about
5 changing files, right, but while it's on, files can be changing
6 while you're tar'ing, right?

7 A. That's correct. It's a live file system, so things are
8 happening constantly.

9 Q. Right. And that's one of the possible reasons for an error
10 message, correct?

11 A. It's a likely explanation for this error message.

12 Q. You didn't know precisely, though, right, and you don't
13 know even today what the precise reason for that error message
14 was?

15 A. I don't, nor do I know the file that caused the message.

16 Q. And when you created the disk image of Mr. Ulbricht's
17 laptop, you didn't use any proprietary computer forensic
18 software, right?

19 A. I did not.

20 Q. And that's -- some of that software can automate the
21 process of capturing a hard drive image?

22 A. In a live capture scenario, sir?

23 Q. Well, is that different?

24 A. It is.

25 Q. All right. So you used a piece of software called DD,

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Beeson - cross

1 right?

2 A. Yes.

3 Q. And that's built into many Linux-based operating systems?

4 A. Yes.

5 Q. And that's a delicate program, right?

6 A. It's a powerful program.

7 Q. In the computer world, doesn't DD have a widely-accepted
8 meaning in the forensics community for disk destroyer?

9 A. I'm not familiar with that. I've -- I've heard it or read
10 it, but it's not what it means.

11 Q. But it can have disastrous consequences for imaging if a
12 mistake is made, correct?

13 A. Yes. As I said, it's a powerful tool.

14 Q. And so at 7:42 p.m. that evening, the first of October, you
15 attempted to generate an MD5 Hash value of the device mapper of
16 on the drive on the computer, right?

17 A. Of the folder depth mapper.

18 Q. What did you attempt to get an MD5 Hash for?

19 A. Well, I attempted several MD5s, so I just want to make sure
20 I'm answering.

21 Q. At 7:42.

22 A. One moment. Okay. Could you repeat that question for me,
23 sir.

24 Q. Sure. Yes. At 7:42 p.m., 1942 hours essentially, you
25 attempted to get -- to generate an MD5 Hash value, right?

Flmgulb7

Beeson - cross

1 A. Actually, what I was attempting to do was to DD the disk,
2 to make a copy or an image of the disk; and at the same time,
3 take that data stream as I read it and pipe it into MD5 sum
4 which would generate my digital fingerprint of the disk at the
5 same time.

6 Q. Right. And that failed, right?

7 A. It did.

8 Q. Permission was denied?

9 A. That's correct.

10 Q. So, then you re-performed the command, though, but without
11 doing an MD5 Hash value at the same time, correct?

12 A. That's correct.

13 THE COURT: You have just a couple of minutes left on
14 today's session, Mr. Dratel.

15 MR. DRATEL: I don't know that I'll finish, your
16 Honor.

17 THE COURT: Just to let you know that we'll end at
18 5:00.

19 MR. DRATEL: Okay. Thank you.

20 Q. Now, the live capture environment, because you're not sure
21 what -- you're not capturing an inactive image, that the image
22 is active, it's called slurring; is that right?

23 A. I'm not familiar with the term slurring.

24 Q. Well, you knew that the DD file that you created was not a
25 replica in exact terms of computer forensic terms of the hard

Flmgulb7

Beeson - cross

1 drive because of the active file system at the time, right?

2 A. It was a replica at the instantaneous point in time when it
3 was made.

4 Q. But it wouldn't match the DD file you created even a second
5 later?

6 A. It would never match because every time I typed something
7 into the keyboard, parts of the file system would change again.

8 Q. And you didn't generate the MD5 Hash until a couple days
9 later, correct, October 3?

10 A. That's correct.

11 Q. And that was when you had started the random access memory
12 - what we call RAM - capture of the laptop, correct?

13 A. That's correct.

14 Q. And are you familiar with the term "order of volatility" in
15 terms of computer forensics?

16 A. I am.

17 Q. So you attempt to capture the most volatile parts of the
18 system first, which is the memory, correct?

19 A. I think in this instance it's arguable.

20 Q. But that's the general principle, right?

21 A. The general principle is, yes.

22 Q. But you didn't try to capture the memory until you'd
23 already done two other processes, correct?

24 A. That order was very carefully selected; yes.

25 MR. DRATEL: I'm kind of going into a different area,

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Beeson - cross

1 Judge.

2 THE COURT: How much more do you have?

3 MR. DRATEL: I probably have about ten to 12 minutes
4 left.

5 THE COURT: Ladies and gentlemen, we will break for
6 today and come back on Monday. And I want to remind you not to
7 talk to each other or anybody else about this case. I also
8 want you to make sure that if you run into any media or news
9 articles about this case, that you avert your eyes and that you
10 don't update your Facebook account or do any tweeting about
11 this case of any kind.

12 We'll pick up on Monday at 9:30, and I'll see you
13 then. Thanks very much. Have a good weekend.

14 (Jury excused)

15 (Continued on next page)

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Beeson - cross

1 (In open court; jury not present)

2 THE COURT: You can step down, sir. Thank you.

3 (Witness temporarily excused)

4 THE COURT: Let's all be seated.

5 Mr. Turner, I know your witness has been hung over the
6 weekend, but it's important that people not feel too rushed if
7 they have got additional examination.

8 MR. TURNER: We try.

9 THE COURT: So we gave it a go and it will be what it
10 will be, so we'll pick up with Mr. Beeson then on Monday
11 morning.

12 At this point in time, does the government have much
13 redirect?

14 MR. TURNER: No.

15 THE COURT: So who is going to be the next witness
16 then after him?

17 MR. TURNER: The next agent would be Special Agent
18 Gary Alford from the IRS.

19 THE COURT: And then after Mr. Alford?

20 MR. TURNER: Then HSI Special Agent Dylan Critten.

21 THE COURT: Those are the next two on my sheet.

22 MR. TURNER: We are going to make some relatively
23 minor additions to our witness list. We're going to be calling
24 one document custodian, I believe, and we're also going to have
25 one additional agent testify. It shouldn't be more than 20

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Beeson - cross

1 minutes or so of testimony.

2 THE COURT: All right. In terms of the document
3 custodian, is there any -- have you folks discussed whether
4 it's the kind of thing that there can be a stipulation as to so
5 we can eliminate the need for the custodian?

6 MR. TURNER: We can discuss it. But I think it's the
7 sort of thing that a document custodian from the company will
8 be able to explain. We were originally going to have an agent
9 testify about it, but as we thought about it, we thought it
10 would be easier to explain it to the jury.

11 THE COURT: Whatever you choose to do. Sometimes
12 document custodians can be eliminated through stipulation. If
13 they can't be, then they can't be.

14 MR. TURNER: Of course.

15 THE COURT: In terms of any other additions, I assume
16 you'll confer with Mr. Dratel first to see whether or not there
17 is any objection to that or if you can talk about the reason on
18 that so there's no need for any kind of court intervention with
19 that.

20 MR. TURNER: Yes, your Honor.

21 THE COURT: Have you previewed each other about that
22 already?

23 MR. TURNER: About five minutes ago.

24 THE COURT: Confer first and then write me a letter if
25 I need to look at anything in advance or we can deal with it

Flmgulb7

Beeson - cross

1 Monday morning, but if it's helpful for me to get up to speed
2 in advance -- if it's a response for certain testimony and you
3 want to preview that, you can do that.

4 Would the government also go through the witness list
5 and adjust whatever times now that you see how things are going
6 and what you may want to do or not do in terms of what your
7 projections are.

8 MR. TURNER: We'll submit a revised witness list over
9 the weekend.

10 THE COURT: Terrific. Based on what you said, and I
11 have no idea what the cross-examination would be, it strikes me
12 that we would be likely to get to the -- for the government to
13 rest on around February 2, which would be about a week from
14 Monday.

15 Does that seem about right or do you think in your gut
16 it's going to go faster or slower or do you just not know?

17 MR. TURNER: I think that sounds about right, your
18 Honor.

19 THE COURT: Then, Mr. Dratel, is there any adjustment
20 to what we had talked about that first day that you know of
21 now? We talked about how long you thought you would take. I'm
22 trying to get a sense frankly. We have juror number ten who
23 will have some timing issues at some point, which I'll try to
24 resolve, but I may not need to or they may not need to be
25 resolved if we're going to end before the middle of the month.

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Beeson - cross

1 MR. DRATEL: I don't know that it's any different in
2 the sense of certainly in terms of commitment, but we do have a
3 better crystallization of what we are going to want to do in
4 that context. But I'll try by the end of tomorrow, certainly
5 by the end of Sunday, to have something prepared.

6 We'll be getting our notices to the government. I
7 think we're in a position now to provide -- in other words, to
8 commit to certain things at least on a level of what we wanted
9 to. We have gone far enough that I can make certain decisions
10 in that regard.

11 THE COURT: I would say, if it turns out from the
12 government's review of its witness list and going through the
13 timing again, if it still looks like the government might rest
14 on a week from Monday, thereabouts, about Tuesday/Wednesday,
15 I'll start asking you, Mr. Dratel, for a better estimate and
16 whether or not you for sure know one way or the other whether
17 the defendant is likely to testify. You don't have to make a
18 final decision, of course, until the moment you call him, but
19 just to get a sense of timing.

20 MR. DRATEL: Sure. Your Honor, I just wanted to say
21 that obviously I've just learned about the new witnesses, but I
22 also learned about a witness the government is not intending to
23 call anymore.

24 MR. TURNER: I think it's subject to discussion.

25 MR. DRATEL: Okay.

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Beeson - cross

1 THE COURT: All right. Then I'll get the new witness
2 list. Let me see. Those are the new estimates.

3 Yesterday the government had mentioned that it wanted
4 to request a jury instruction or instruction to the jury. I
5 did then give the instruction that we discussed.

6 Was there anything else that the government believed
7 was necessary? Do you remember this?

8 MR. TURNER: Yes.

9 THE COURT: Do you think it's taken care of?

10 MR. TURNER: Yes.

11 THE COURT: I didn't know if there were two
12 instructions you were thinking of in terms of that that were
13 going to be separate, one for the AA, one for the other pieces.

14 MR. TURNER: No, I think your Honor's instruction was
15 sufficient, combined obviously with the direct testimony.

16 THE COURT: I have little notes of things that are
17 open. You'll get the jury instructions, your first draft,
18 tomorrow. My practice is to iterate. Depending upon how much
19 time we have, my goal would be to get comments from you folks
20 Monday evening, hopefully in Word form, just in comments and
21 the text, and we start a charging conference on Tuesday at
22 9:00.

23 What I'll do is, we'll start with whatever page people
24 have comments on first and you'll both give me your comments.
25 If you've got language changes, you'll give me language changes

Flmgulb7

Beeson - cross

1 as opposed to sort of, you know, 'I don't really like the way
2 this is.'

3 So if you have issues, be as specific as possible and
4 if you disagree with an instruction, come prepared with a case
5 cite or whatever it is you think supports your view.

6 And can I get a copy of GX 226, Government
7 Exhibit 226. It's the chat that you read, Mr. Howard, just
8 before Mr. Beeson was called.

9 MR. TURNER: I believe it's 226D.

10 THE COURT: Maybe I just had written it down wrong and
11 that was why I didn't see it in my book. I've got 226D. Fine.

12 Is there anything that you folks would like to raise?

13 MR. TURNER: No, your Honor.

14 THE COURT: Mr. Dratel.

15 MR. DRATEL: No. Thank you, your Honor.

16 THE COURT: Then we'll pick up Monday morning at 9:00
17 with us and I'll receive over the weekend from the government,
18 or whenever it is, the revised witness list. You folks will
19 talk. You'll let me know if there are things that you know of
20 in advance that you want to raise by letter, and you'll get a
21 copy of the draft jury instructions tomorrow.

22 Thanks. We're adjourned.

23 THE DEPUTY CLERK: All rise.

24 (Adjourned to January 26, 2015 at 9:00 a.m.)

25 * * *

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GOVERNMENT EXHIBITS

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502A1019
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5021020
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205A1022
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2971023
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2981029
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10001101
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10011104
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10051108
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1	10061109
2	10081114
3	10021116
4	10031127
5	10041140
6	500A1204
7	501A-501D1207

DEFENDANT EXHIBITS

9	Exhibit No.	Received
10	G1048
11	J1061
12	R-571167

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